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HERITAGE STATEMENT

In respect of

Pound Farm, Stanley, Chippenham, SN15 3RG

On behalf of

Wood Architects

AHC REF: PM/10397

Date: July 2025

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Appendix 3: R (Egerton) v Taunton Deane Borough Council, 2008 - EWHC 2752 (Admin)

Appendix 4: Institute of Historic Building Conservation's 'Advice Note on the Curtilage Rule – An interpretation of the Taunton Deane judgment' (March 2019)

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1.0 INTRODUCTION & SCOPE OF REPORT

- 1.1 This report has been prepared and written by Patrick C. Maguire, IHBC, Director at Asset Heritage Consulting Ltd., on behalf of the Wood Architects in order to provide an independent assessment of the impact of the proposed selective demolition and conversion of the redundant farmstead buildings at Pound Farm, Stanley to a mixed holiday-let, residential, and commercial use.

Heritage designations and considerations

- 1.2 The application site is not located within a conservation area and does not contain any individually-listed buildings.
- 1.3 Pound Farmhouse, which falls outside the 'red-lined' site was added to the statutory list at Grade II (see statutory list entry at **Appendix 1**) in 1987, presumably as part of the Accelerated National Resurvey.
- 1.4 In written pre-application feedback, the Council has advised, *'it is possible that some (or all) of the associated farmstead buildings may be curtilage listed or considered to be non-designated heritage assets (NDHAs)'*.
- 1.5 It is the responsibility of the local planning authority to identify non-designated heritage assets (see the definition of heritage assets in the glossary of the NPPF) and advise on the extent of listing and whether or not listed building consent is required for proposed works (also see p.4 of HEAN10).
- 1.6 However, the local planning authority has advised in this case that the application submission should included a detailed statement of significance to, *'help to highlight the heritage status of the farmstead buildings (i.e. whether curtilage listed under the farmhouse listing or non-designated heritage assets in their own right or neither)'*. This statement of significance is incorporated as part of this heritage statement, which also goes on to provide a heritage impact assessment.
- 1.7 That said, officers have also advised that, *'The historic buildings are highly likely to be curtilage listed so any works to them will require listed building consent (internal and external works). The LPA advises that you should be working on the*

basis that the historic buildings (i.e. those originally of brick, stone and tile construction) are curtilage listed, and only if the SoS can provide definitive evidence that certain buildings are not curtilage listed (they were constructed after 1948 but prior to the date of first listing of the farmhouse in 1987)'.

- 1.8 I am unsure what officers are alluding to in noting that only buildings post-dating 1948 but pre-dating 1987 should not be considered listed by virtue of curtilage; the 1987 date is irrelevant in that respect, as Section 1(5)(b) of the Planning (Listed Buildings & Conservation Areas) Act 1990 is clear that buildings post-dating 1948 cannot be considered listed by virtue of curtilage in any circumstance (they can, however, form part of a listed building if physically connected to it, which is distinct issue considered under Section 1(5)(a) of the Act).
- 1.9 While I note the Council's stated view that buildings pre-dating 1948 on this site are likely to be considered listed by virtue of curtilage, I also note that this is a complicated issue, with a key consideration, and one considered in detail in Historic England's relevant guidance ('Advice Note 10: Listed Buildings & Curtilage' (June 2025), hereafter: **HEAN10**), being the test of whether a building can reasonably be considered ancillary to the use of the host listed building. As noted in the Blackbushe High Court judgement, '*...objects cannot fall within the extended definition of a listed building unless they are ancillary to that building*' (Blackbushe Airport Ltd v Hampshire County Council, 2020 - [2020] EWHC 959 (Admin) – **Appendix 2**).
- 1.10 In my view (see full discussion at Section 3.0 below), applying the relevant tests, informed by national guidance and relevant case law, the majority of the farmstead buildings cannot, in my view, reasonably be considered ancillary to the use of the listed farmhouse and, as such, are not listed by virtue of curtilage. The exceptions are the pigsty and wash-house identified as structures 7 & 8 on **Fig.1** below.
- 1.11 I do, however, take the view that the farmstead assemblage as a whole can reasonably be considered a non-designated heritage asset (although not all elements contribute to the same extent, if at all, to its significance). Moreover, the contribution this assemblage makes to the significance of the listed farmhouse as part of its setting is clearly a key (and statutory) consideration for the determination of this application.

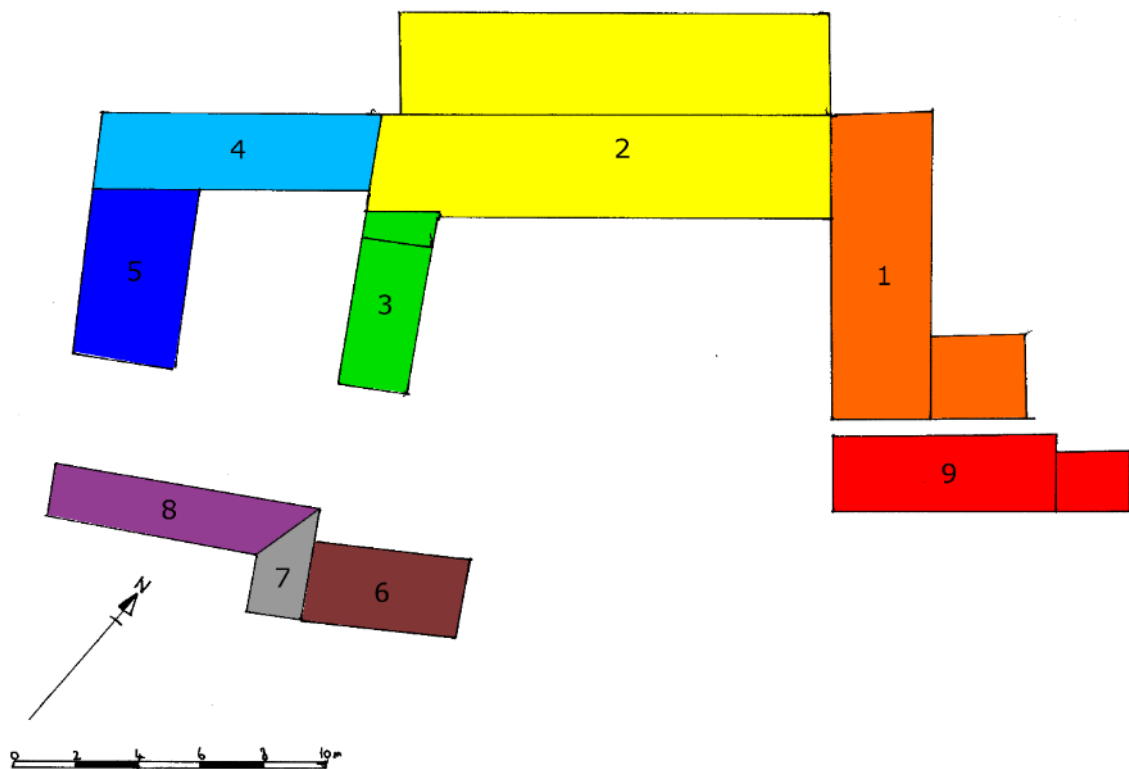


Fig.1. Building identification plan; colours are used only to demarcate the extent of buildings identified by numbers

Pre-application discussion

- 1.12 I allude above to a pre-application submission and initial discussions had regarding the issue of curtilage listing; however, whether the redundant farmstead buildings can reasonably be considered listed by virtue of curtilage or not, they '*should be considered in proportion to their significance*' (Historic England, Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2' (July 2015)' p.5, hereafter: **GPA2**).
- 1.13 In this context, pre-application feedback was generally supportive of the proposed approach. It noted that:
- The proposed mix of uses would be appropriate (p.5);

- The structures proposed for demolition have been correctly identified and will, alongside removal of hard-standing and formation of planting in the yard be an enhancement to the setting of the listed farmhouse (p.5);
- Creation of more green spaces will generally be welcomed (p.6);
- Where buildings identified for conversion retain historic features, these should be retained and incorporated into the scheme (p.6); and
- The proposals may represent the 'optimum viable use' of the farmstead buildings (p.6).

1.14 Following the pre-application feedback, I was appointed as built heritage advisor on this project and carried out a full site inspection and meeting with the applicant/project architect, where we discussed how the buildings to be retained could be converted in a sympathetic manner that not only retained features of historic interest but, where possible, better reflected the historic form and function of the redundant agricultural buildings. The outcome of this process is reflected in the submitted proposals.

Methodology

1.15 This report falls into two distinct parts: the first sets out the historical background to the development of the site and its surroundings, focussing on assessing the heritage significance of the site in its current form.

1.16 As such, this report complies with the requirements of paragraph 207 of the National Planning Policy Framework (NPPF) and the onus it places on those planning changes to historic assets to include a clear description of the significance of the assets affected, albeit that the requirement in the NPPF is only such that, *'The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance'*.

1.17 This second part of the report focuses on an assessment of the effects of the proposed works on the significance of the site in built heritage terms, with a

particular emphasis on the contribution that its setting makes to the significance of Pound Farmhouse.

- 1.18 This two-stage approach of understanding 'significance' before moving on to assess the impact of potential change on that 'significance' has for some time been regarded as good conservation practice in the design and application process (see, for instance, English Heritage's, now Historic England's, 'Conservation Principles', 2008) and, following the introduction of the short-lived PPS5 in 2010 and the NPPF in 2012 (and its more recent iterations), is now effectively a standard requirement for most applications affecting heritage assets.
- 1.19 As the documentation prepared by the scheme's architects, Wood Architects, and planning consultants, LPC Trull, naturally includes a full explanation of the design approach taken to the proposals and the planning policy background, this report instead focuses on an assessment of the impact of the proposals on the heritage significance of the site.

Summary assessment

- 1.20 For the reasons set out more fully in the body of this report, it is my considered view that the application proposals would not merely preserve but enhance the contribution that its setting makes to the significance of the listed Pound Farmhouse, better reflecting its historic agricultural character than the ill-kempt form of the existing yard.
- 1.21 Similarly, the proposals would have a positive effect on the significance of the farmstead assemblage as a non-designated heritage asset.
- 1.22 As such, I am firmly of the view that the proposals are compatible with both local and national policy and legislation on the conservation and enhancement of the historic built environment, including the guidance set out in the NPPF and its accompanying PPG, and, most importantly of all in heritage planning terms, pass the statutory test set by Section 66 of the Planning (Listed Buildings & Conservation Areas) Act 1990.

-
- 1.23 For the reasons set out in Section 3.0, I am not of the view that the buildings affected by these proposals can reasonably be considered listed by virtue of curtilage; however, should the Council maintain their initial position expressed at pre-application stage that the pre-1948 farmstead buildings (i.e. structures 1, 3, 4, 5, and 6 as identified at **Fig.1** above) affected by these proposals should be considered listed by virtue of curtilage, and thus form part of the listed Pound Farmhouse, I am not of the view that the works under discussion would result in harm to the significance of the designated heritage asset (i.e. the extended definition of the listed building that comprises both the listed farmhouse and its curtilage-listed structures) and, as such, should the Council insist upon the requirement for listed building consent in this case, the proposals would also pass the statutory test at Section 16 of the 1990 Act.

2.0 HISTORICAL BACKGROUND & DESCRIPTION

Historical background

- 2.1 Pound Farm is located to the south-west of Stanley, a village that falls on the western edge of Bremhill, a large parish in north Wiltshire, to the east of Chippenham. Stanley is perhaps best known for its Cistercian abbey, which flourished in the 12th and 13th centuries, and survived until the Dissolution of the monasteries in the 1530s. It was located on the southern side of the Marden, to the south-east of Pound Farm, close to the surviving Stanley Manor Farm. The site of the abbey precinct was cut through by the line of the Calne railway in the early 1860s (Brakspear, H., 'The Cistercian Abbey of Stanley, Wiltshire' *Archaeologia* 60 (1907) 496-8).
- 2.2 The statutory list entry for Pound Farmhouse notes that the house dates from the 18th century, possibly around an earlier core. Pound Farm is depicted on Andrews & Dury's 1810 map of Wiltshire, where it is shown as two ranges set in an enclosure close to the junction of Stanley Lane and Studley Hill. This shows two ranges set at right angles and one might consider the eastern range to reflect the position of the farmhouse; however, on the face of it little can be said about the layout of the farmstead from this depiction on the county map, which is schematic at best.



Fig.2. 1810 Andrews & Dury map of Wiltshire. The depiction of Pound Farm is identified with a red circle



Fig.3. 1808-16 (published 1827/28) one-inch OS map

- 2.3 That said, a similar arrangement is also shown on the 1808-16 (published 1827/28) one inch to the mile OS map (**Fig.3**). While the scale is very small, this shows the same arrangement of the farmhouse running at a right angle to the road, with a free-standing building (presumably a barn or range of farmstead buildings) set back from and parallel to the road to the west. It also shows a small structure, possibly the origins of the existing structure 8 (pigsties), to the south of the house. The accuracy of this map is attested by the fact that it shows a further building set to the east of the farmhouse. A structure in that location is shown on larger-scale late 19th-century OS maps but had been removed by the 1920s.
- 2.4 These early 19th-century maps therefore suggest a farmstead, the principal buildings of which comprised the house in its existing location and a building or range of working buildings set to the west and parallel to the road.
- 2.5 This arrangement had changed by the end of the 19th century, with the farmstead in something approaching its modern form shown on the 1885 (published 1886) 1:2500 scale OS map (**Fig.4**). This shows the farmhouse with its existing L-shaped footprint set within a domestic garden with a distinct access (the existing access) from Studley Hill. The boundary between the garden and yard may relate to the existing substantial boundary wall (**plate 1**). A garden is shown to the south-east

(reflecting the domestic curtilage shown on the 1808-16 OS map at **Fig.3**) and an orchard to the south-west. Structures 6, 7, and 8 are shown to the south-west of the house, with the distinctive pigsty form of structure 8 clearly shown. Behind the house (north-west), a small enclosure is shown set between the rear range of the house and the agricultural yard. It is clear from a 1980s' aerial photograph (**Fig. 9** below) that there was a physical barrier along this line.

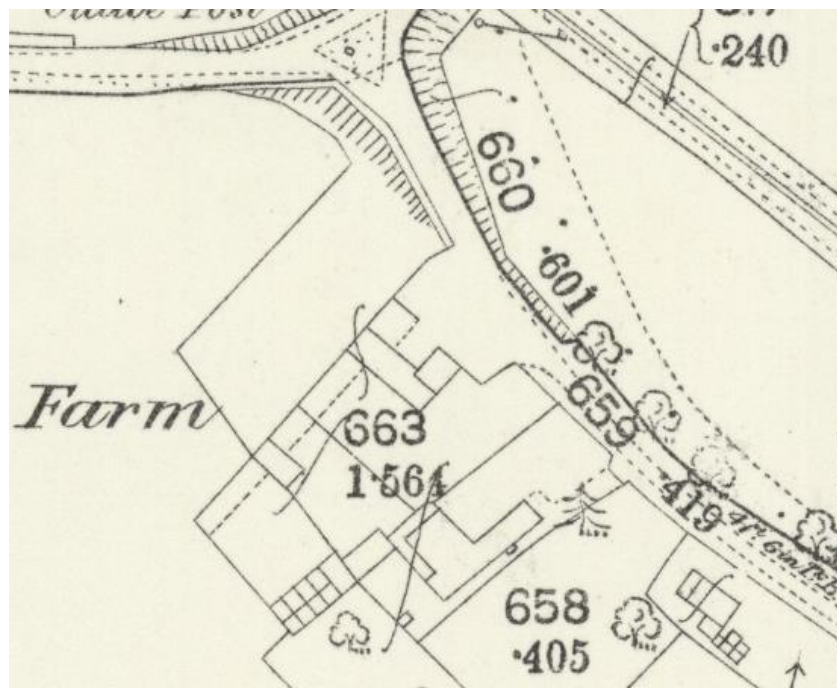


Fig.4. 1885 (published 1886) 1:2500 scale OS map (the Calne railway line can be seen in the top-right corner)

- 2.6 The 1885 map shows the working yard to the north with its own access from the road and divided into a series of foldyards, indicating that it was almost certainly used largely for livestock by this stage. The range of working buildings shown on early 19th-century maps is not present but instead there is a long range enclosing the north-western side of the yard, with two southwards projections at its north-eastern end and roughly at its centre. These buildings clearly relate to the existing structures 1, 3, and 4. The surviving central wall within the later building 2 also relates to the rear wall of the central element of this range (**plate 2**). It is worth emphasising that the map identifies structure 4 as open-fronted (denoted with a dotted line), which can be seen in the timbers of the existing building despite modern blockwork infilling (**plate 3**).

- 2.7 The 1885 map therefore shows a cattle farm comprising a series of foldyards served by shelter sheds, sheltering its northern edge. Cheese-making was well-established in the area, with dairy functions generally carried out within local farms until the end of the 19th century (Chandler, J., (ed), 'Victoria County History: work in progress: Bremhill' 15). With milk, meat, and cheese prices faring far better than arable crops during the Agricultural Depression from the end of the 1870s, cattle farming was a safer bet in this period. Indeed, the national dairy herd rose by nearly a quarter between 1866-70 and 1896-1900, and by a further 28 per cent by 1926-30 (Mingay, G.E., *Land and Society in England, 1750-1980* (London, 1994) 204).
- 2.8 Also worth noting on the 1885 map is the Calne railway line running roughly parallel to the road. The Chippenham and Calne line was opened in 1863 and sold to Great Western in 1892. A local stop, the Stanley Bridge Halte, was constructed opposite Pound Farm in 1905 (closing in 1965 – Chandler, *op.cit.*, 4) and can be seen on the 1922 1:2500 scale OS map (**Fig.5**). The price of fresh milk in particular held up through the Agricultural Depression and beyond and, unlike cheese and butter, was not at risk of foreign competition, but it was reliant on the railways to get from farms to urban centres while still fresh (Mingay, *op.cit.*). As such, one can well see the advantages to a cattle farm in the early 20th century of a railway stop immediately outside.

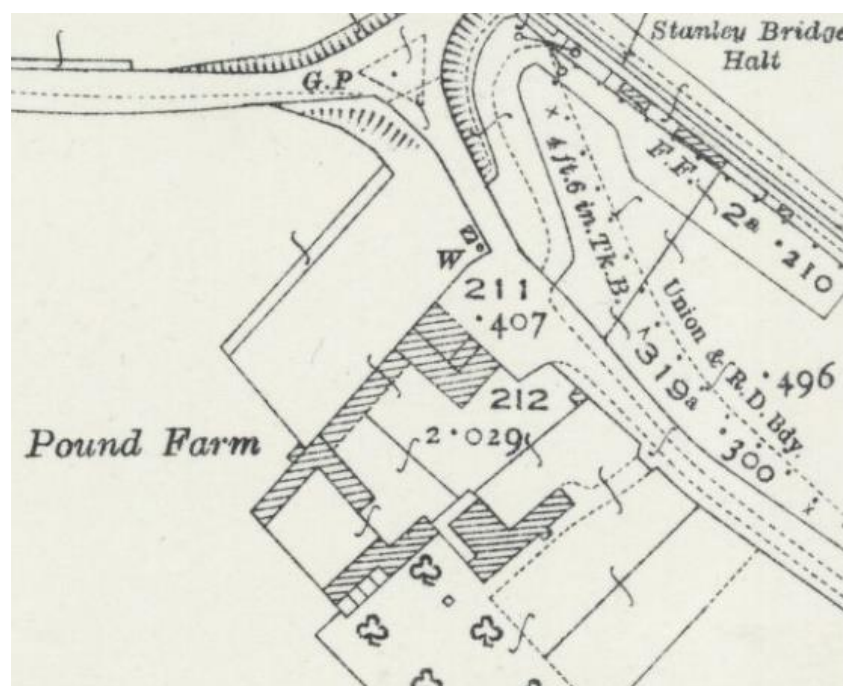


Fig.5. 1922 (published 1924) 1:2500 scale OS map

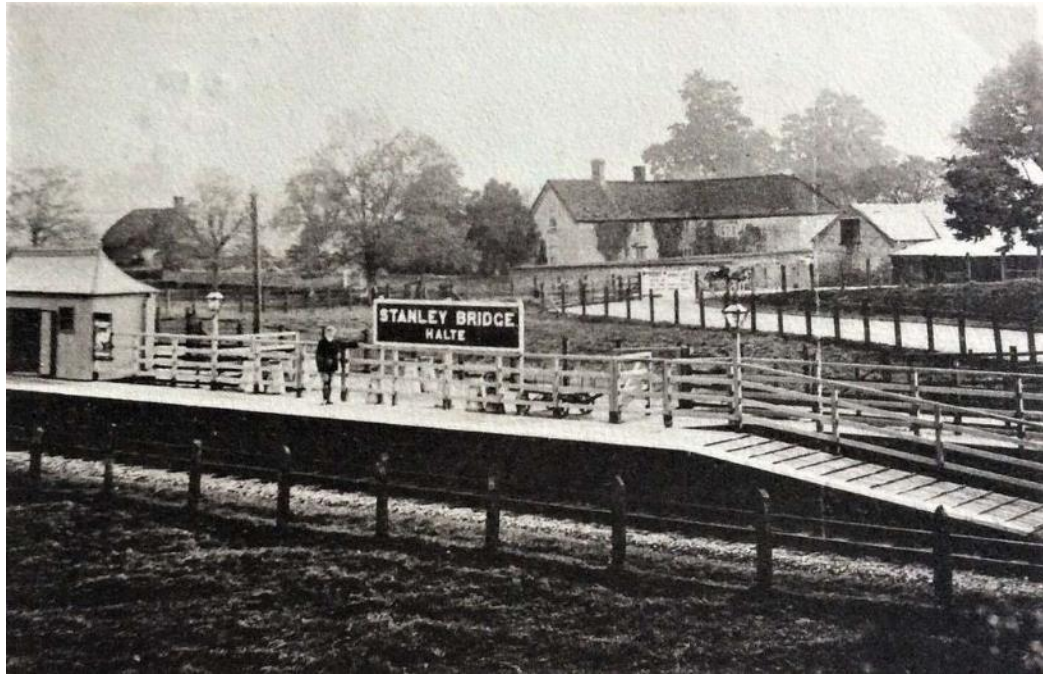


Fig.6. Early 20th-century photograph of Stanley Bridge Halte showing the farmhouse and structure 1 in the background

- 2.9 The arrangement shown on the 1922 map (**Fig.5**) is little changed from that in the late 19th century (**Fig.4**) but for the infilling of the area on the north-eastern side of structure 1 (i.e. facing onto the road). This lean-to structure can be seen on an early 20th-century photograph of Stanley Bridge Halte, which also shows the north-eastern end of structure 1 and the distinct access to the yard (**Fig.6**). Note also that the rear range of the listed building has been heavily altered, perhaps largely rebuilt since this photo was taken; the hipped end has been replaced with a gable (so the attractive, moulded bargeboards on this side are a 20th-century addition), a ridge stack has been formed, and a first-floor window inserted into the rear (north-western elevation), as well as on the northern-western bay of the north-eastern elevation. The formation of the gable appears to have occurred by 1951 (see aerial image at **Fig.8** below which shows a continuous ridge to the rear range). The ridge stack is not shown on the 1951 image but was in place by 1981 (aerial image at **Fig.9** below).

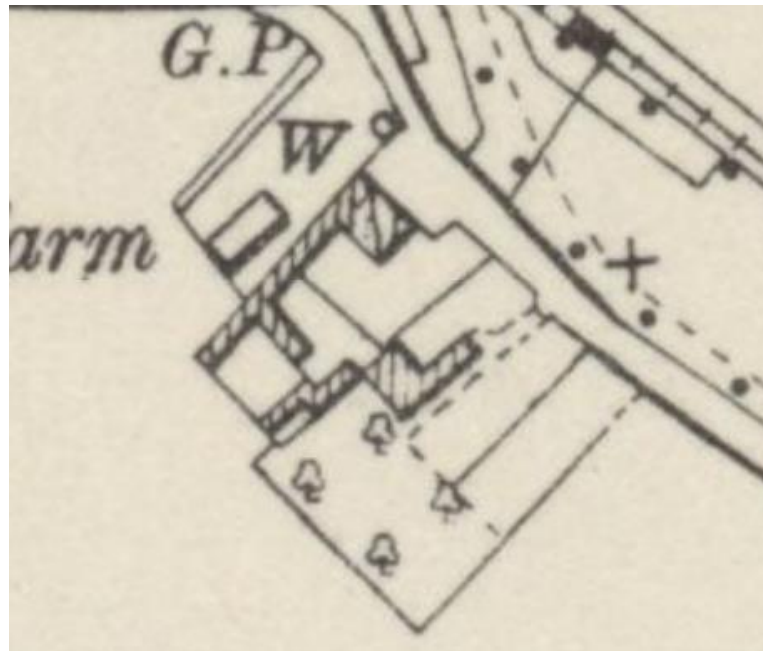


Fig.7. 1938 (published c.1948) 1:10,560 scale OS map

- 2.10 A similar situation to that in 1922 is also shown on the 1938 (published c.1948) 1:10,560 scale OS map (**Fig.7**), with the only notable change being the addition of a covered yard outside the historic yard to the north. This arrangement can still be seen on an RAF aerial photograph of July 1951 held by Historic England (**Fig.8**).



**Fig.8. RAF aerial photograph dated 4th July 1951 (HE ref. RAF/540/549).
North is towards the bottom right**

- 2.11 Changes since 1951 have been the addition of the milking parlour (structure 9) and the blockwork western range (structure 5). Moreover, the central of the main farmstead ranges has been largely demolished and replaced with a larger mono-pitched structure (structure 2). The covered yard outside the northern side of the yard has also been removed but a Dutch barn erected to the north-east. Other than the removal of the early 20th-century covered yard, these changes all occurred before 1981, as indicated by a further aerial image provided by the applicant (**Fig.9**).
- 2.12 It is worth noting that this image still shows the wall between the rear range of the house and the yard, as depicted as a boundary on the 1885 map (**Fig.4**), although this stretch of the garden wall has since (after 2001 – see paragraph 3.14 below) been demolished, with its junction with main garden wall rebuilt (**plate 4**).

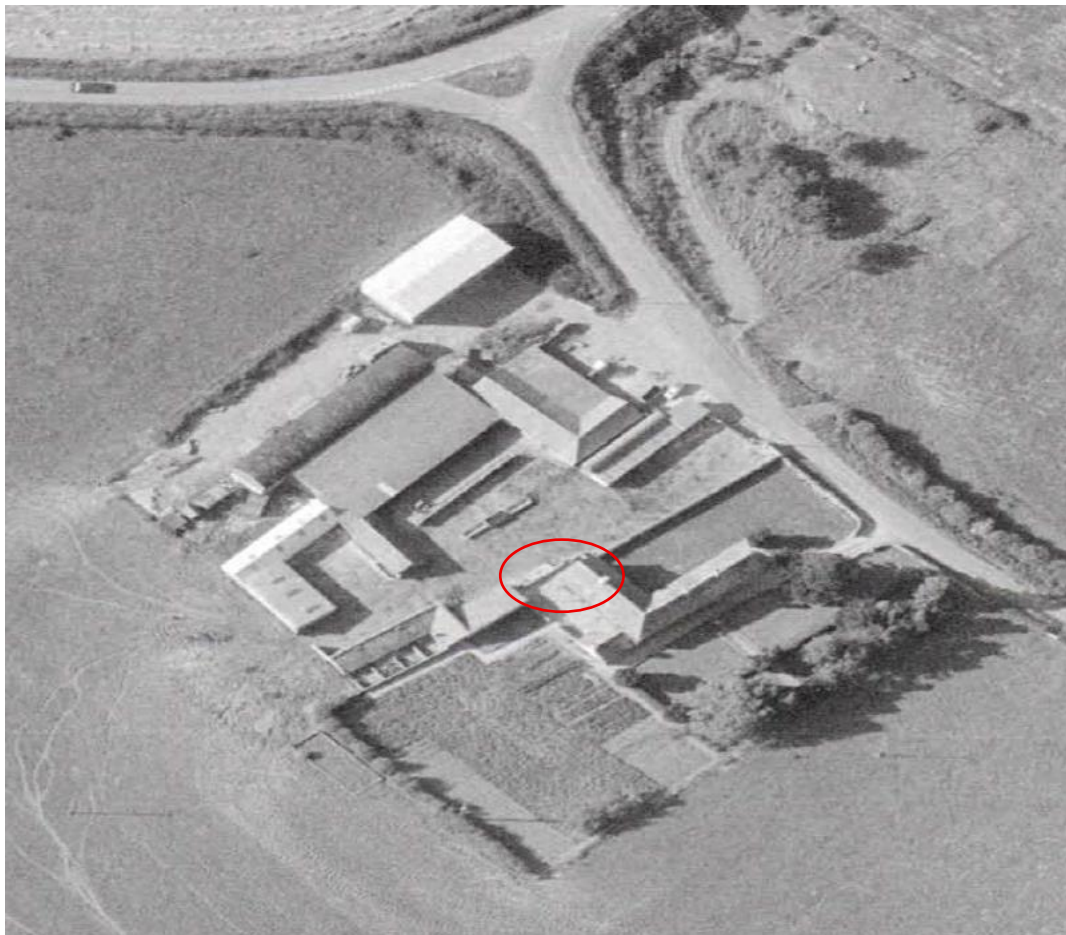


Fig.9. 1981 aerial photograph. The since-removed stretch of wall between the rear range of the house and yard is marked with a red circle

Description & analysis

The farmstead assemblage

- 2.13 As noted above, the farmstead retains much of the layout it possessed in the late 19th century, including its distinct access from the road and its central yard, enclosed on the north by (now redundant) working buildings and separated from the house and its domestic curtilage by a substantial boundary wall (albeit part of this wall has been removed since 2001).
- 2.14 Indeed, other than changes to individual buildings, the main changes since then have been:
- the addition of the blockwork structure 5 at the western end of the yard after 1951 (**plate 5**);
 - the replacement of the central shelter shed with a larger, mono-pitched structure (retaining the back wall of the original building as a central partition) (structure 2 - **plates 2, 6, & 7**);
 - the erection of the milking parlour after 1951 (structure 9 - **plate 8**);
 - the erection of the Dutch barn outside the historic yard after 1951 (**plate 9**); and
 - the removal of the wall between the rear range of the house and the yard after 2001 (**plate 4**).
- 2.15 From the road, Pound Farm is distinguishable as two distinct elements: the farmhouse in its neat domestic curtilage to the south and the (now redundant) working farm to the north (**plate 11**). The two areas have distinct boundary walls to the road, with a substantial wall also located between the domestic curtilage and the working yard.

- 2.16 As the setting of the listed building forms a key consideration for this submission, it is worth briefly describing its immediate setting and domestic curtilage, even though this falls outside the application site. The listed farmhouse comprises two ranges set out at right angles to form an L-shape. The statutory list entry (**Appendix 1**) notes that the building is largely of 18th-century date (likely around an earlier core) but that the south-western bay of the principal range is an addition of the 19th century (**plates 11-13**).
- 2.17 The farmhouse is set within a well-defined garden, with a low, rubblestone boundary wall to the road creating a substantial forecourt, with a taller wall separating this from the working yard (**plate 14 & 15**). The dividing wall is in random rubble below and brickwork above, suggested it was raised at some stage (**plate 16**). The garden continues around the southern side of the house and continues onto the former orchard to the north. On its north-western side, the pigsties (structure 8), now in a ruinous state (**plates 17 & 18**), separate the garden from the from the working yard.
- 2.18 Returning to the agricultural yard, unfortunately, when seen from the road, this is largely experienced in the form of utilitarian additions of the second half of the 20th century, notably the unattractive milking parlour (structure 9) (**plates 9 & 19**), although the traditional form of the gable end of structure 1 can be seen from the road (**plate 20**), hinting at the presence of a traditional agricultural yard within.
- 2.19 The hard surface of the yard is largely overgrown and generally the buildings have an unkempt character, reflecting their redundant nature (**plate 21**). Most of the formerly open-fronted structures have been infilled at a later date.

Structure 1

- 2.20 Building 1 comprises two historic structures: a rubblestone structure at its eastern end which has been incorporated into a 19th-century brick range running to the west. While it is not shown on early 19th-century maps, it is difficult to believe that the rubblestone element is not of at least 18th-century date, constructed of random coursed rubble with quoins (**plate 22**). It has been lifted in height in brickwork including on its northern gable (**plate 20**).

- 2.21 Its historic roof form (but not structure, which where visible from ground-floor level has been replaced in modern planks – **plate 23**) survives only on the northern end and this part of the building was a stable with a hayloft above. The first-floor structure survives, albeit in a perilous condition, including a substantial, chamfered, transverse beam (**plate 24**), presumably reused as the joists are circular sawn (**plate 25**). The surviving stalls are, however, modern blockwork. There are two characterful, slatted stable windows on the south-eastern elevation (**plate 26**), now unfortunately enclosed by the later structure 9 (**plate 27**).
- 2.22 The other range of structure 1 is built in 19th-century brickwork but retains none of its historic roof. This has been replaced by a flat-roof comprising a timber deck and corrugated sheeting, which is failing and missing altogether at the northern end (**plates 28-30**). Parts of the southern wall have been rebuilt in blockwork (**plate 31**) and there is a modern concrete floor (**plate 29**).

Structure 2

- 2.23 Structure 2 is situated in the location of the main portion of the range that historically enclosed the northern side of the yard; however, only the rear wall of that range remains, acting as the lower part of the central partition within the existing structure (**plates 2 & 33**). Otherwise, the pre-20th-century building has been replaced with a larger, open-fronted, metal-framed barn (**plate 34**). Its mono-pitched roofs extends northwards beyond the extent of the historic yard (**plate 7**).

Structure 3

- 2.24 Structure 3 is a small shed constructed in Sussex bond (**plate 35**) and retaining part of a clay pantile roof (**plate 36** – tiles have been re-laid at some stage so may not be the historic coverings). It historically faced onto the foldyard to the north-east, although it had a single-width doorway (now blocked) on the south-western foldyard (**plate 37**).
- 2.25 It was historically open-fronted to the north-east, acting as a shelter shed, but has been infilled with modern blockwork, obscuring its historic character (**plate 38**). It has a 19th-century, machine-cut, king-post roof, although rafters and

purlins have been replaced in the 20th century (**plates 39 & 40**). There are modern concrete troughs (**plate 41**).

- 2.26 It incorporates a WC at its north-western end, which is a separate structure, clearing incorporating parts of several earlier structures, with rubblestone below, topped with 19th-century brickwork, itself topped with several courses of Flettons (**plates 42 & 43**).

Structure 4

- 2.27 Structure 4 is a former shelter shed, with its open-fronted southern elevation latterly infilled in blockwork (**plates 44 & 45**). Its surviving rear (northern) wall is constructed in English bond and it has modern, corrugated sheet roof coverings. The rear wall is coming away from the south-western elevation (**plate 46**). While the English bond brickwork of the rear wall is of 18th-century date (part of the earlier farmstead structure shown on the early 19th-century OS maps?), the building has a 19th-century, machine-cut, king-post roof (**plate 47**). There is a modern concrete trough against the rear wall (**plate 48**).

Structure 5

- 2.28 Structure 5 is a late 20th-century open-fronted blockwork shelter of no interest (**plates 5 & 49**).

Structure 6

- 2.29 Structure 6 is a former open-fronted, lean-to shelter shed. Its rear wall forms a boundary with the farmhouse garden and has a rubblestone plinth topped with an English-bond superstructure (**plate 50**). Like structure 4, the open-fronted yard-elevation has been infilled in blockwork and the roof re-covered in corrugated sheeting (**plate 51**).
- 2.30 Indeed, the roof structure has been replaced in a modern, ad hoc arrangement of planks (**plate 52**). The building appears to have been used latterly as a stable or loose box, with a central blockwork partition and trough. It is probable that the conversion of structure 6 to a stable is related to the erection of the milking parlour

(structure 9) immediately in front of the access to the earlier stable within structure 1 in the third quarter of the 20th century.

Structures 7 & 8

- 2.31 Structures 7 & 8 comprise pigsties and a probable wash-house. They relate to the farmhouse's curtilage rather than the yard and present a substantial rubblestone wall to the north (**plate 53**). From the south, the lean-to pigsties are constructed in an irregular brickwork, with attractive, round-headed archways. The roof is clad in slate, now failing (**plates 17 & 18**).

Structure 9

- 2.32 Structure 9 is a modern milking parlour constructed in blockwork and of no interest (**plate 55**).

3.0 ASSESSMENT OF SIGNIFICANCE

- 3.1 The purpose of this section of the report is to assess the significance of the site in heritage terms. This will provide a 'baseline' against which the application proposals can be assessed at Section 4.0.

Curtilage listing

- 3.2 As noted in the Introduction to this report, the Council have advised that they are of the view regarding this site that, '*The historic buildings are highly likely to be curtilage listed*' (pre-application feedback).
- 3.3 Pound Farmhouse is a statutorily-listed building, having been added to the list at Grade II in 1987. Section 1(5)(b) of the Planning (Listed Buildings & Conservation Areas) Act 1990 states that for the purposes of listing, the 'building' also includes any object or structure within its curtilage, which forms part of the land and has done so since before 1st July 1948.
- 3.4 On this statutory basis, structures 5 and 9, which demonstrably post-date 1948 (see 1951 aerial image at **Fig.8** above) cannot be considered listed by virtue of curtilage.
- 3.5 Case law (Sutcliffe v. Calderdale BC, 1982, and Debenhams plc. V. Westminster CC, 1987) confirms that when assessing whether a structure or object is within the curtilage of a listed building one must give regard to:
- The physical layout of the listed building or the structure;
 - Their ownership, both historically and at the date of listing; and
 - The use or function of the relevant buildings, both historically and at the date of the listing, i.e. curtilage-listed buildings must be ancillary to the use of the main building.

- 3.6 The 2020 'Blackbushe' High Court judgement emphasises the final point: '*...objects cannot fall within the extended definition of a listed building unless they are ancillary to that building*' (Blackbushe Airport Ltd v Hampshire County Council, 2020 - [2020] EWHC 959 (Admin) – **Appendix 2**).
- 3.7 Historic England has issued guidance (HEAN10) on the issue of curtilage listing, which sets out a number of specific scenarios in which structures might be considered curtilage listed, with particular reference to the more subjective issues of what constitutes an ancillary use and a close physical relationship.
- 3.8 Chapter 3 of this advice deals specifically with farmsteads and example 3.1 is the closest example to Pound Farm. This concerns a farmhouse and agricultural buildings (a barn and stable) that were historically in the same ownership. In terms of physical layout, in this example, '*The farmhouse stands in its own garden and the farm buildings are outside*', which is clearly analogous to Pound Farm.
- 3.9 Historic England's guidance is that, '*In this case, in our view, the physical separation of the unlisted farm buildings from the listed farmhouse when combined with the distinction between the mostly domestic nature of the farmhouse and the business-related function of the barn and stable block are likely to mean that they would be considered to be outside its curtilage... The answer in farm cases in particular depends on the degree of physical separation and the distinction in use. In the 'Jews Farmhouse' case [R v Taunton Deane Borough Council, 2008] the High Court decided that a barn in farm business use was not within the curtilage of the listed farmhouse nearby. The physical separation was a factor, and so was the fact that the barn was being used purely for farm business purposes, in contrast to the principally domestic nature of the farmhouse, even though business administration was conducted in the farmhouse too*' (p.12).
- 3.10 From the discussion at Section 2.0 above, it is clear that Pound Farmhouse has (and historically has had) a well-defined domestic curtilage, distinct from the working yard to the north-west, including having historically been served by separate accesses from the road. Indeed, noted as at paragraphs 2.5 and 2.12 above, until at least 2001, there remained a boundary wall between the rear range of the house and the yard (and, historically, the rear range did not even have a first-floor window looking onto the yard – see historic photograph at **Fig.6** above).

As such, there has historically been a clear distinction between the domestic curtilage of the house and the working agricultural yard.

- 3.11 There also remains the principle, set out in the Jews Farmhouse case referenced by Historic England, of whether an agricultural building should in principle be considered ancillary to the function of a domestic dwelling.
- 3.12 The 'Jews Farmhouse' case (R (Egerton) v Taunton Deane Borough Council, 2008 - EWHC 2752 (Admin) – **Appendix 3**), related to a dispute as to whether a barn in farm business use adjacent to a listed farmhouse was itself listed by virtue of its being within the curtilage of the farmhouse at the time when the farmhouse was listed. The High Court concluded that the barn was not within the curtilage of the listed farmhouse.
- 3.13 In the judgment, Sullivan J considered all three of the 'Calderdale' factors (physical layout, past and present ownership, and past and present function). He did not accept that historical association alone would be sufficient to allow the land or buildings in question to be regarded as being within the curtilage of the farmhouse itself. The functional relationship (if any) of the land and buildings in question with the farmhouse at the material date (in that case, the time of listing in 1984) was the ultimate determining factor, even when the other two factors were also taken into account.
- 3.14 A factor in the 'Jews Farmhouse' case was the presence of a wall between the farmhouse and the farmstead and it is noted in the Institute of Historic Building Conservation's 'Advice Note on the Curtilage Rule – An interpretation of the Taunton Deane judgment' (March 2019) (**Appendix 4**) that, *'the Jews Farm case is not determinative in all farm cases. In large part, the decision turned on its particular facts – notably that there was a substantial wall between the farmhouse and the two farm buildings'* (p.2).

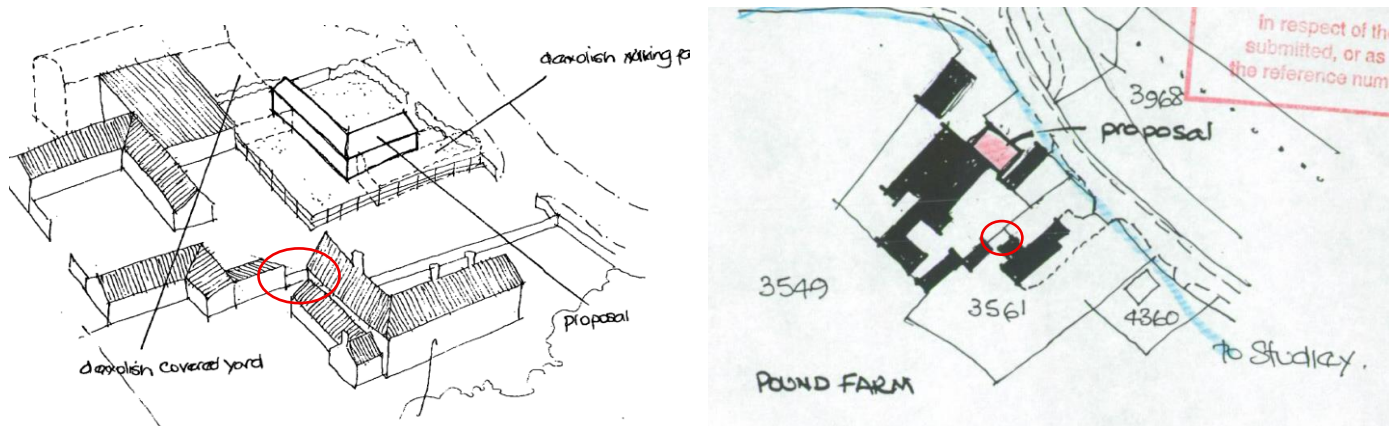


Fig.10. Proposed drawings accompanying application ref.01/01821/COU; note they still show the stretch of boundary wall between the rear range of the house and the agricultural yard, since removed (circled red)

- 3.15 Of course, just such a substantial wall exists in the case of Pound Farm (**plates 1 & 4**). The wall historically – from as early as 1885 (**Fig.4**) – also continued behind the rear range of the farmhouse, fully separating the house from the working yard, and while it has since been truncated survived on that side until at least 2001, being shown on plans and drawings accompanying application ref.01/01821/COU, e.g. **Fig. 10**. As such, a clear and deliberate physical boundary has historically (including at the time of listing) existed between the residential curtilage of the farmhouse and the working agricultural yard, as at Jews Farmhouse.
- 3.16 More generally, the Legal & Governance Director of English Heritage, Mark Harlow, penned an article, 'Legal Developments – Curtilage and Farm Buildings' (*Conservation Bulletin*, Summer 2009, p.13), in which he referred to the Jews Farmhouse case, noting that, '*The key point of interest was the way the judge approached function and use*' and concluding that, '*Although the layout of the buildings, their distance apart and the existence of physical boundaries between them were also factors in this decision, it is hard to see why this functional distinction (a farmhouse being a dwelling and farm buildings being agricultural) would not weigh heavily in all farm cases, even where the buildings were very much closer and no boundaries between them existed. In this case it could also be argued that non-domestic agricultural buildings attached to the farmhouse are not protected by listing either*'.

- 3.17 Martin Goodall, a highly-respected specialist planning solicitor, has also written on this subject. He cites (in a 2013 article) the practical interpretation of the term curtilage that is most widely accepted and applied as being the following from the judgment in *Sinclair-Lockhart's Trustees v. Central Land Board* (1950) 1 P&CR 195: *'The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way'* (<http://planninglawblog.blogspot.com/2013/03/barns-near-listed-farmhouses.html>, accessed 2nd January 2025).
- 3.18 Goodall goes on to say that, *'In most cases, any nearby barn will not at any time have served the purpose of the farmhouse in any necessary or useful way. Its function will have related solely to farming activities, and it would not in any way be associated with the residential use of the farmhouse. Thus such a barn does not even meet the basic Sinclair-Lockhart test, nor does it conform to the dictionary definition, if it is not attached to the dwellinghouse, but is physically and functionally separate from it, not forming (or being regarded by the law) as forming one enclosure with the farmhouse and not being within the area attached to and containing the dwellinghouse. Neither such a barn nor any other building in the farmyard could be described as 'outbuildings' of the farmhouse, if they were devoted solely to agricultural or other non-domestic uses'*.
- 3.19 I note that the Inspector in the allowed 2002 appeal decision ref.APP/J3910/A/01/1077805 regarding the conversion of structure 1 to holiday accommodation use noted, *'It seems to me that, as a curtilage building, it could be protected by the farmhouse listing'* (paragraph 8); however, the Inspector did not consider this issue in detail or reach any firm view on the point and, crucially, made these comments prior to the High Court's decision on the Jews Farmhouse case. Moreover, there is no evidence of listed building consent ever having been sought for works to the farm buildings at Pound Farm, including in relation to that appeal scheme (which the local planning authority would surely have advised should be included alongside the planning application if they felt it was required).
- 3.20 On the basis of the evidence discussed above, it is difficult, therefore, to see how structures 1, 2 (only the central wall of which pre-dates 1948), 3, 4, or 6 could

reasonably be considered ancillary to the domestic use of Pound Farmhouse and, as such, be listed by virtue of curtilage.

- 3.21 Rather the domestic curtilage and working yard have historically had distinct and well-defined enclosure and functions, benefitting from distinct access points from the road (since at the very least 1885) and substantial physical boundaries, with the latter only muddled by the removal of part of the intervening wall after 2001 (long after the relevant date of statutory listing in 1987). Indeed, the domestic farmhouse 'turns it back' on the agricultural yard, facing south-wards.
- 3.22 Structures 7 and 8, however, have a different relationship with the house to the other farmstead buildings, being accessed directly from the domestic curtilage of the farmhouse, sharing the same access from the road and opening onto the domestic garden. As such, I am of the view that, unlike the structures opening onto the working yard, structures 7 and 8 have a principal and accessory relationship with the listed farmhouse and, as such, can reasonably be considered listed by virtue of curtilage.

Assessment of significance

- 3.23 The issue of curtilage listing is a legal distinction, which relates only to the extent of the listed building in question. It does not in and of itself indicate that a building covered by the listing through virtue of curtilage is of heritage significance; it merely means it is part of the listed building and not all parts of a listed building will necessarily contribute to its significance in the same way (or, indeed, at all).
- 3.24 This position is firmly established in Historic England's relevant guidance on these issues. HEAN2 states that:

'Some buildings and structures are deemed designated as listed buildings by being fixed to the principal building or by being ancillary within its curtilage and pre-dating 1 July 1948. Whether alteration, extension or demolition of such buildings amounts to harm or substantial harm to the designated heritage asset (ie the listed building together with its curtilage and attached buildings) needs careful consideration. Some curtilage structures are of high significance, which should be taken fully into account in decisions, but some are of little or none. Thus, like other

forms of heritage asset, curtilage structures should be considered in proportion to their significance' (p.8 – my emphasis).

3.25 This national guidance sets out that curtilage-listed structures need to be considered in proportion to their significance and there are cases where they may be of no significance and, therefore, that their demolition will not be harmful at all.

3.26 This is clearly correct, as curtilage-listing is a legal distinction based on ownership, function, and age and does not in itself indicate that any assessment of significance has been carried out.

3.27 This position is reinforced in Historic England specific guidance document on curtilage-listed buildings, HEAN10. This states that:

'A building within the curtilage may have its own special architectural or historic interest or may contribute to the special interest in the principal building as part of the group...it is obviously important to understand whether a curtilage building is protected in principle and what special interest it holds, on its own or together with the principal building. It is possible, of course, that it holds no special interest and so, even if it is within the curtilage, works to it and even its demolition will require no consent. The advice of the local planning authority should be sought given the serious implications of a misjudgement' (p.2 – my emphasis).

3.28 As such, whether the redundant farm buildings at Pound Farm should be considered curtilage listed or not, it is important to understand their heritage significance.

3.29 As will be clear from the discussion at Section 2.0 above, Pound Farm represents a traditional farmstead and its agricultural history remains clearly legible. Despite changes to the individual structures, the general layout of agricultural buildings set around a well-defined courtyard reflects the arrangement of the site that existed by the end of the 19th century. This gives the site a degree of architectural interest, defined by the PPG as, *'interests in the design and general aesthetics of a place'* that, *'an arise from conscious design or fortuitously from the way the heritage asset has evolved'* (Paragraph: 006 Reference ID: 18a-006-20190723).

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- 3.30 The main exceptions to this are the modern construction of buildings 5 and 9, alongside the reconstruction of building 2 on a larger footprint and the erection of the Dutch barn outside the historic extent of the yard.
- 3.31 That said, the site remains legible as a historic farmstead, incorporating traditional farm buildings of a relatively consistent scale (indeed, there is no large historic barn on the site, suggesting it was not used for arable at all in its current form) set in a yard arrangement.
- 3.32 Indeed, it was clearly in use from by the late 19th century as cattle farm. As numbers of cattle on farms increased from around the mid-18th century, it became increasingly common for, instead of enclosed cow-houses, cattle to be housed in open foldyards with shelter provided by open-fronted shelter sheds (generally facing south, to provide shelter from wind on the northern side) as found at Pound Farm. While it is unfortunate that the open-fronted character of the sheds has been lost, this historic character and use remains legible. It therefore illustrates an important process in the development of agriculture and farmstead layouts, offering it a further degree of historic and architectural interest.
- 3.33 Taken as a group, this courtyard farmstead assemblage is therefore of clear heritage interest. Indeed, using the criteria specified in Historic England's March 2015 'Farmstead Assessment Framework', this assemblage can reasonably be considered to fall with the characterisations of '*minor change and/or loss to historic form*' (p.6). Indeed, the site retains the overall form of a traditional (i.e. pre-1940s) farmstead within a setting of surrounding fields.
- 3.34 Such a characterisation inevitably masks the various alterations that have occurred to the individual structures but accurately describes the legibility of the site as a historic farmstead.
- 3.35 Indeed, while the form and layout of the farmstead is largely unaltered from its late 19th-century arrangement (but for the exceptions noted above), the individual buildings have been heavily altered, with the widespread replacement of roof coverings (e.g. structures 6 and 4) or roof structures (most egregiously in the case of building 1) and the infilling of historic open-fronted structures.

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- 3.36 As Historic England's 'Farmstead Assessment Framework' sets out, *'The greater the survival of the historic form of the group and the detail of individual buildings, the greater will be its significance as a traditional farmstead'*.
- 3.37 Of the individual structures, those that retain the greatest degree of their historic character are the stable at the eastern end of structure 1 (which retains its first-floor structure and slatted windows, albeit the former is in a parlous condition and has modern joists) and the structure 3, which retains its original roof coverings. The curtilage-listed pigsties (structure 8) also retain a good degree of their historic character, albeit the slate roof coverings have failed.
- 3.38 Structures 3, 4, and 6 also retain their historic outer walls and, of limited significance, mass-produced 19th-century king-post roofs. Their historic characters (and therefore architectural interest) could clearly be enhanced by removing modern blockwork infilling and reinstating timber posts to their formerly open fronts.
- 3.39 The main portion of structure 1 comprises a 19th-century brick shell with a failed, modern flat roof and is of only the most limited heritage interest.
- 3.40 Structure 2 is a modern shed, with its only minimal heritage interest related to the vestigial brick wall that once formed part of the rear wall of the earlier shelter shed here.
- 3.41 Structures 5 and 9 are, alongside the Dutch barn, modern, utilitarian buildings of no interest or heritage significance.
- 3.42 More generally, even the older structures (e.g. structures 3, 4, and 6) have been heavily altered internally through the formation of modern cement floors and concrete troughs/stalls, which are of no heritage interest. There is no reason why these modern features should form any part of future proposals affecting these buildings.
- 3.43 Returning to the Historic England's 'Farmstead Assessment Framework', this sets out a number of criteria that may render a traditional farmstead of 'special significance in a local or national context'. This includes demonstrable

relationships with significant archaeological remains/parkland/estates/common land, the retention of early buildings (particularly minor 18th-century or earlier structures, as these survive less commonly than barns), rare surviving material (such as doors, stalls etc.), or demonstrable and discernible relationships with either landed estates or common land.

3.44 None of these factors are applicable to the farmstead buildings at Pound Farm.

3.45 As such, it would be reasonable to consider the farmstead at Pound Farm to be significant in a local context, providing a recognisable example of a traditional farmstead on a site that has incorporated a farmstead of some form since at least the 18th century and no doubt earlier.

3.46 A 'non-designated heritage asset' is defined by the PPG as:

'...buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets.'

'A substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage significance to merit identification as non-designated heritage assets' (Paragraph: 039 Reference ID: 18a-039-20190723).

3.47 On the basis of the assessment above, I am not of the view that any of the individual redundant farm buildings at Pound Farm is of sufficient heritage interest to be considered a non-designated heritage asset in its own right; however, I am of the view that the significance of the farmstead assemblage is 'greater than the sum of its parts' and, when the site is considered as a whole, it can reasonably be considered a non-designated heritage asset as a historic farmstead assemblage.

3.48 Moving beyond the intrinsic interest of the site, a key consideration for the determination of this application is also the contribution that the site makes to the significance of the listed Pound Farmhouse as a part of its setting.

- 3.49 The farmhouse is significant for its architectural significance as a substantial post-medieval farmhouse. It is constructed in the local vernacular, notably the use of local random rubble and stone slates to the main portion of the house: '*Within the parish are very many 17th- and 18th-century farmhouses, typically built of local rubblestone and generally under stone slate roofs*' (Chandler, *op. cit.*, 8). The 19th-century extension shows polite influences and uses coursed, squared rubble with ashlar architraves to the sash windows. Indeed, this phasing articulates the architectural development of this part of Wiltshire in the period: '*The Corallian ridge has been extensively quarried locally for ragstone and ironstone rubble to be used as building material...These local resources underpin Bremhill's built environment, supplemented after 1800, once the canal and then railway made movement easier, by materials, such as ashlar limestone, from further afield*' (*Ibid.*, 7). It is therefore an attractive, multi-phased building, deriving architectural interest from its form and fabric.
- 3.50 The listed building also derives architectural and historic interest through its status as a farmhouse as opposed to simply a house. It is this historic status that articulates its historic purpose and the reason for its isolated location. In this sense, the ability to read the building as a farmhouse is an important element of its significance and this is derived from its setting.
- 3.51 Its setting comprises three main elements: the well-defined domestic curtilage immediately around the house, including the entrance court to the north and the garden and former orchard to the south/west (including the pigsties), well differentiated from the working agricultural yard by boundary walls; the (now redundant) agricultural yard to the north; and the its wider setting, including the fields to the south and west, and the road to the east.
- 3.52 The well-defined domestic curtilage emphasises the historic role of the house as a domestic building and the distinction that often exists between farmhouses and the associated working farmyards. This distinction has been reduced slightly since 2001 by the removal of part of the boundary wall between the rear range and the yard.
- 3.53 The presence of a legible agricultural yard to the north and the presence of fields/paddocks to the west/south and the road to the east helps articulate the

historic role and function of the house as a farmhouse, contributing to its architectural and historic interest.

- 3.54 However, the derelict nature of the yard and its constituent buildings diminishes this contribution, bearing in mind particularly that the NPPF defines 'setting' in experiential terms and the PPG describes 'architectural interest' as, '*interests in the design and general aesthetics of a place*' (Paragraph: 006 Reference ID: 18a-006-20190723).
- 3.55 This contribution could therefore be enhanced, 'better revealing' this element of the significance of the listed farmhouse through careful repair of the historic agricultural buildings. Moreover, the securing of a viable use for the site and buildings would be to the benefit of the setting of the listed building, bearing in mind that historically it sat alongside a busy agricultural yard, which would have been characterised by industry and activity.
- 3.56 This contribution could also be improved by selective demolition. In my view, structure 9 (the milking parlour) in particular is an unattractive modern building that is prominently seen alongside the listed building from the road and obscures visibility of traditional farmstead buildings. It therefore detracts from the architectural and historic interest of the farmhouse as part of its setting.

4.0 THE APPLICATION PROPOSALS & THE HERITAGE ISSUES

4.1 Section 3.0 established the significance of the site in built heritage terms, drawing on the historical background and description set out in Section 2.0.

4.2 Having considered this, the purpose of this section of the report is to analyse the application proposals against that significance in order to establish the effects of the scheme in heritage terms.

The application proposals

4.3 The application scheme seeks to convert the redundant farmstead buildings at Pound Farm to create a mixed-use development.

4.4 The conversion works to individual farmstead buildings are predicated on the concept that their historic form and function should remain legible, although this approach is proportionate to the heritage interest of the individual buildings.

4.5 As such, in general terms, where, for instance, buildings were historically open fronted, effort has been taken to ensure that, as much as is practically possible and in proportion to the building's heritage interest, some sense of this former character remains or is better revealed by the proposals.

4.6 The intrusive milking parlour (structure 9) and the tin-roofed lean-to against the north-eastern side of structure 1 are to be demolished.

4.7 Structure 1, which was granted planning permission for conversion to holiday let in 2002 (ref.01/01821/COU), is to be converted (along the same lines in terms of physical changes) into a private rental property. The failed flat roof will be replaced with a reinstated pitched roof (hipped at the corner) in plain clay tiles. Its character as a traditional agricultural building will be more legible than is currently the case.

4.8 Internally, the later brick wall that bisects the former stable at the northern end is to have a door opening formed within it. The modern stalls in the stalls within the stable are to be removed. The floor structure above is in a parlous state and

it is proposed to retain and repair the chamfered transverse beam but remove the machine-cut joists and re-used boards above. This will create a double-height space but retain the most significant fabric (the beam) and allow its historic character as a stable with hayloft over to remain traceable, albeit clearly not as legible internally as is currently the case.

- 4.9 Structure 2 is to be converted into a commercial space, retaining the historic central wall and glazing the open elevations, to allow its open-fronted character to remain legible. While this structure is of no interest, the legibility of an open-fronted character on this side of the yard, consistent with historic function of the foldyard and shelter sheds, is important to the character of the agricultural yard as a non-designated heritage asset.
- 4.10 Structures 3, 4, and 5 are to be converted to holiday lets. Crucially in the cases of the structures 3 and 4, where modern blockwork infilling has obscured their historic character as open-fronted buildings, this is to be removed. Timber posts are to be reinstated to demarcate the bays and, following Historic England guidance ('Adapting Traditional Farm Buildings: Best Practice Guidelines for Adaptive Reuse' (report; September 2017)), glazing is to be set back into the frame.
- 4.11 The result is that the historic character of the yard as a series of shelter sheds will again be revealed.
- 4.12 On building 4, two new window openings will be incorporated into the rear wall, requiring the loss of small areas of historic brickwork. The corrugated sheet roof covering is to be replaced with plain clay tiles, with three conservation rooflights incorporated into the rear slope.
- 4.13 Building 6 is to be converted to a holiday let on similar principles, with modern stalls removed.
- 4.14 More generally, the yard surface will be tidied up and planting and green infrastructure incorporated, providing an attractive space, distinct from the domestic garden of the farmhouse to the south but without the decrepit character the site currently possesses as a redundant agricultural yard. Although the site,

which is largely in a sad state, will clearly be 'tidied up', its broad arrangement will remain as existing. That is to say, an open yard surrounded by former agricultural buildings.

The heritage issues

- 4.15 The key (and closely interlinked) heritage issues in this case are the impact of the proposals on the significance of the farmstead assemblage as a non-designated heritage asset and the impact of the proposals on the contribution that its setting makes to the significance of the listed Pound Farmhouse.
- 4.16 The application scheme proposes the demolition of structure 9 (milking parlour), which is of no heritage interest and currently detracts from the character of the farmstead (notably blocking the principal elevation of the historic stable – structure 1) and from the setting of the listed farmhouse. This is clearly acceptable in heritage terms and, indeed, would better reveal the significance of the designated and non-designated heritage assets.
- 4.17 Otherwise, the proposals would give the redundant agricultural buildings a long-term use and purpose by converting the existing structures to viable new uses. In general terms, this action will 'tidy up' the site and secure the repair, maintenance, and long-term future of the constituent buildings.
- 4.18 Indeed, without such a scheme to secure the relevance and purpose of the site, it is fair to anticipate that the most likely future scenario would be the continued decline and disrepair of the site and buildings.
- 4.19 This is consistent with Historic England's published advice on 'Adapting Historical Farm Buildings' (September 2017), which notes that, '*Without a regular stream of income to support their upkeep, most traditional farm buildings will not survive*' (p.4).
- 4.20 Indeed, this published advice notes that, '*In the majority of cases adaption, or an appropriate use within a sympathetic development scheme, will be the only means of funding maintenance and repair, the lack of which will lead to further deterioration and eventual loss of heritage assets*' (Ibid.).

- 4.21 The PPG, in the paragraph entitled '*Should the deteriorated state of a heritage asset be taken into account in reach a decision on an application*' is clear that '*disrepair and damage and their impact on viability can be a material consideration in deciding an application*' and that it is only in cases where '*there is evidence of deliberate damage to or neglect of a heritage asset in the hope of making consent or permission easier to gain [that] the local planning authority should disregard the deteriorated state of the asset in any decision*' (Paragraph: 014 Reference ID: 18a-014-20190723).
- 4.22 I am not aware of any such evidence in this case (with the sad condition of the site being not atypical of many former agricultural/former agricultural sites) and, as such, this is a situation where the poor state of the site and the likely effects of future deterioration should be material considerations in the determination of the application.
- 4.23 In this regard, one of the principal impacts of the scheme, to secure a long-term future for the farmstead assemblage and its constituent buildings, represents a substantial heritage-related public benefit.
- 4.24 In terms of its layout and design, the scheme is an appropriate response to the historic character of the site, removing intrusive modern buildings retaining the existing historic buildings and, crucially, the historic layout of agricultural buildings set around a yard. Indeed, the historic form of the site as a series of shelter sheds around foldyards will be more legible than its currently the case, with the historic open-fronted character of structures 3, 4, and 6 being articulated by the proposed glazing and reinstatement of timber posts to the bays of the principal elevations.
- 4.25 The proposed use and layout means that it will not incorporate new boundary treatments within the yard, which will retain its historic form and proportions. Indeed, the only private dwelling proposed, structure 1, has been chosen to that its garden can be accommodated outside the historic yard, on the northern corner of the site.
- 4.26 Generally in terms of character, what is currently an overgrown, almost derelict site will benefit from improved surfacing and the introduction of green infrastructure. Notably, combined with the removal of the milking parlour

(structure 9), views into the site will look onto a tidy yard as opposed to onto scrubland and derelict buildings as is currently the case.

- 4.27 The structures visible across the yard will remain discernible as former agricultural buildings, although they will clearly be in modern use. The general approach to the buildings on the site is a sympathetic one, seeking to retain historic buildings *in situ*. Modern, corrugated sheet roof materials are to be removed and replaced with clay-tile roof coverings, a clear improvement to the traditional character of the agricultural yard. On building 1, the reinstatement of a traditional pitched roof (replacing the poor-quality flat roof on the main range of this building) will be to the clear benefit of the character of the yard. Two conservation rooflights are proposed on the south-western pitch of the reinstated roof. While rooflights are also proposed on structure 4, these too are to be conservation rooflights on the rear (north) pitch only. Clearly, combined with the replacement roof coverings, the overall effect will be a material improvement on the current situation.
- 4.28 While some new openings are proposed in solid walls, these are limited in scope (two new full-length windows on the northern elevation structure 4, the reopening of the blocked doorway and new full-length window on the south-eastern elevation of structure 3, and a new window and door on the north-western elevation of structure 1) and will allow the solid, agricultural character of the buildings to remain well articulated.
- 4.29 Internally, other than the transverse beam (to be retained) in structure 1 and king-post trusses in structures 3 and 4 (to be retained), these redundant agricultural buildings retain no features of interest, and I do not identify any harm through the removal of modern concrete floor slabs or troughs. While the buildings will see a degree of internal subdivision that is at odds with their historic usage, considering the limited interest of their interiors, I do not identify any harm to the farmstead assemblage as a non-designated heritage asset through the proposed internal changes.
- 4.30 In my view, the scheme as a whole will render the site more legible as a historic cattle farm than is currently the case, while clearly having a material positive impact on its architectural interest (i.e. '*interests in the design and general aesthetics of a place*') through the creation of a more attractive space. The

removal of building 9 in particular will better reveal the historic character of the northern end of building 1 as a traditional stable.

- 4.31 As such, I am of the view that the proposals would have a positive impact on the significance of the agricultural assemblage as a non-designated heritage asset, before one takes into account the material public benefit of securing a long-term viable use for its constituent historic buildings.
- 4.32 Moreover, the proposals would clearly result in no harm to the contribution that its setting makes to the significance of the listed farmhouse to the south. The would remain legible as a farmhouse (as opposed to simply a house), with the historic agricultural character of the adjacent yard continuing to be expressed. Moreover, the reintroduction of an active use to the yard will reinstate part of the lost historic character of the listed building's setting as a busy area full of activity.
- 4.33 Moreover, in purely aesthetic terms, the removal of structure 9, the tidying up of the yard, and the repair and conversion of the retained building would improve the experience of views onto and out of the farmhouse, including from the road.

5.0 CONCLUSION

- 5.1 For the reasons set out more fully in the body of this report, it is my considered view that the application proposals would not merely preserve but enhance the contribution that its setting makes to the significance of the listed Pound Farmhouse, better reflecting its historic agricultural character than the ill-kemp form of the existing yard.
- 5.2 Similarly, the proposals would have a positive effect on the significance of the farmstead assemblage as a non-designated heritage asset.
- 5.3 As such, I am firmly of the view that the proposals are compatible with both local and national policy and legislation on the conservation and enhancement of the historic built environment, including the guidance set out in the NPPF and its accompanying PPG, and, most importantly of all in heritage planning terms, pass the statutory test set by Section 66 of the Planning (Listed Buildings & Conservation Areas) Act 1990.
- 5.4 For the reasons set out in Section 3.0, I am not of the view that the buildings affected by these proposals can reasonably be considered listed by virtue of curtilage; however, should the Council maintain their initial position expressed at pre-application stage that the pre-1948 farmstead buildings (i.e. structures 1, 3, 4, 5, and 6 as identified at **Fig.1** above) affected by these proposals should be considered listed by virtue of curtilage, and thus form part of the listed Pound Farmhouse, I am not of the view that the works under discussion would result in harm to the significance of the designated heritage asset (i.e. the extended definition of the listed building that comprises both the listed farmhouse and its curtilage-listed structures) and, as such, should the Council insist upon the requirement for listed building consent in this case, the proposals would also pass the statutory test at Section 16 of the 1990 Act.

6.0 REFERENCES

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Historic England, 'Farmstead Assessment Framework' (report; March 2015).

Historic England, 'National Farmsteads Character Statement' (report; October 2014).

Mingay, G.E., *Land and Society in England, 1750-1980* (London, 1994).

Planning records and original documentary sources are fully referenced in the text.

PLATES



Plate 1. The boundary wall between the residential curtilage of the farmhouse and the agricultural yard



Plate 2. The lower element of the central wall within structure 2 relates to the rear wall of the earlier shelter shed in this location



Plate 3. Structure 4; formerly open-fronted shelter sheds on the site have been infilled in blockwork



Plate 4. The rear of Pound Farmhouse showing the boundary wall between the house and yard; the area of wall behind the rear range has been demolished and its junction with the surviving stretch of wall rebuilt since 2001



Plate 5. Structure 5



Plate 6. Structure 2, the modern, mono-pitched shed that replaced the main shelter shed on the northern side of the yard



Plate 7. Structure 2 from the north, where it extends beyond the historic extent of the yard



Plate 8. Structure 9, the modern milking parlour



Plate 9. The Dutch barn to the north of the yard



Plate 10. Looking from the road across the yard entrance onto the farmhouse



Plate 11. The principal, south-eastern elevation of the house, with 19th-century extension to the right



Plate 12. The south-western end of the house



Plate 13. The house from the entrance court to the north-west



Plate 14. The house from the road, looking over its roadside boundary wall; note the taller boundary wall to the agricultural yard on the right



Plate 15. The low roadside boundary wall of the house adjacent to the taller boundary wall with the agricultural yard, as well as the distinct boundary wall between the working yard and road



Plate 16. The tall boundary wall between the house and yard; note, the only opening in this wall is where it has been rebuilt at the western end



Plate 17. The pigsties on the north-western side of the farmhouse garden



Plate 18. The pigsties on the north-western side of the farmhouse garden



Plate 19. Looking into the yard from the road; from this angle any views of the traditional farm buildings on the northern side are curtailed by the modern structure 9



Plate 20. Structure 9 and the gabled structure 1 from the road



Plate 21. View across the unkempt yard



Plate 22. The south-western elevation of structure 1, where the earlier, stone-built stable has been incorporated into the later range



Plate 23. The damaged end of the transverse beam at the northern end of Structure 1; note the modern plank roof structure visible beyond



Plate 24. The surviving first-floor structure at the northern end of structure 1



Plate 25. While historic boards have been reused, the first-floor structure in structure 1 is constructed with circular-sawn joists



Plate 26. Slatted windows to the former stable at the northern end of structure 1



Plate 27. Structure 9 – the milking parlour – has been erected very close to the south-eastern elevation of the former stable at the northern end of structure 1



Plate 28. The modern flat roof in the main range of structure 1 is failing



Plate 29. The modern flat roof in the main range of structure 1 is failing



Plate 30. The modern flat roof in the main range of structure 1 is failing



Plate 31. Parts of the southern wall of structure 1 have been rebuilt in blockwork



Plate 32. The main range of structure 1 has a modern concrete floor



Plate 33. The lower element of the central wall within structure 2 relates to the rear wall of the earlier shelter shed in this location



Plate 34. Structure 2 is a modern, open-fronted, metal shed



Plate 35. Structure 3 from the south



Plate 36. Structure 3 from the south-west



Plate 37. A historic doorway on the south-western elevation of structure 3 has been infilled



Plate 38. Structure 3 was historically a shelter shed, open onto the central foldyard on its north-eastern elevation; however, this has been infilled in blockwork



Plate 39. King-post truss in structure 3



**Plate 40. King-post truss and later replacement purlins and rafters in structure
3**



Plate 41. Concrete troughs in structure 3



Plate 42. The WC structure at the north-western end of structure 3 incorporates parts of an earlier wall



Plate 43. The WC structure at the north-western end of structure 3



Plate 44. Structure 4 was historically a shelter shed, open onto the south-western foldyard on its southern elevation; however, this has been infilled in blockwork



Plate 45. Structure 4 from the north



Plate 46. The rear wall of structure 4 is coming away from the south-western gable elevation



Plate 47. King-post truss in structure 4



Plate 48. Concrete troughs in structure 4



Plate 49. Structure 5 from the south-west



Plate 50. The rear wall of structure 6 from the farmhouse garden



Plate 51. Structure 6 was historically a shelter shed, open onto the south-western foldyard on its northern elevation; however, this has been infilled in blockwork



Plate 52. Modern stalls have been inserted within structure 6



Plate 53. The rear of structures 7 and 8 seen from the agricultural yard



Plate 54. The milking parlour (structure 9)

APPENDIX 1

Listed building description

Official list entry

Heritage Category:

Listed Building

Grade:

II

List Entry Number:

1199331

Date first listed:

25-Nov-1987

List Entry Name:

POUND FARMHOUSE

Statutory Address 1:

POUND FARMHOUSE

The scope of legal protection for listed buildings

This List entry helps identify the building designated at this address for its special architectural or historic interest.

Unless the List entry states otherwise, it includes both the structure itself and any object or structure fixed to it (whether inside or outside) as well as any object or structure within the curtilage of the building.

For these purposes, to be included within the curtilage of the building, the object or structure must have formed part of the land since before 1st July 1948.

[Understanding list entries](#)

[Corrections and minor amendments](#)

Location

Statutory Address:

POUND FARMHOUSE

The building or site itself may lie within the boundary of more than one authority.

District:

Wiltshire (Unitary Authority)

Parish:

Bremhill

National Grid Reference:

ST 95368 72593

Details

BREMHILL STANLEY ST 97 SE 8/64 Pound Farmhouse II Farmhouse, C18, possibly on earlier core, extended in C19, rubble stone with stone slate roof and ashlar ridge stacks. L-plan, two storeys, the end bays of each range apparently C19 additions with barge boarded gables. Main front has double-fronted centre with 6- panel door in C19 gabled barge boarded timber porch, brick cambered heads to windows to left, a triple casement below, casement pair above and plain casement pair each floor to right. Ridge stack to left of door and at original right end. C19 bay added at right end is of squared rubble with one ground floor 12-pane sash. Left end has roof hipped at angle and one-window range of plain casement pairs. C19 endbay has end-wall 12-pane sash each floor. Rear of main range has plain casement pair each floor to left and cambered- head casements and blocked door to right. Rear wing has ridge stack, 2-window range of cambered-head triple casements in stone surrounds and blocked cambered-head door to left. Twelve-pane sash each floor in end gable.

Listing NGR: ST9536872593

Legacy

The contents of this record have been generated from a legacy data system.

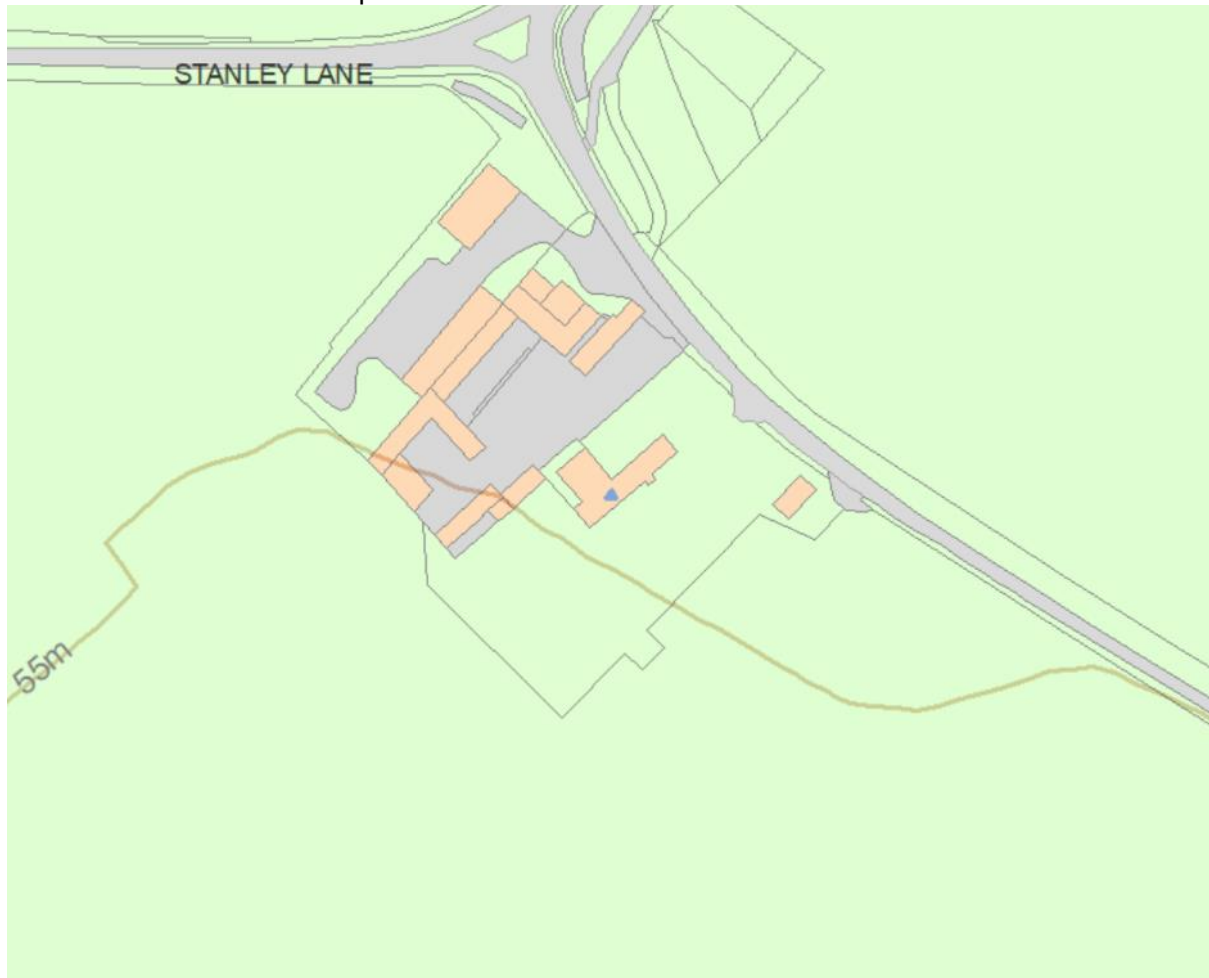
Legacy System number:

316188

Legacy System:
LBS

Legal

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.



Map

This map is for quick reference purposes only and may not be to scale. This copy shows the entry on 15-Jul-2025 at 14:31:44.

[Download a full scale map \(PDF\)](#)

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End of official list entry

Appendix 2

Blackbushe Airport Ltd v Hampshire County Council, 2020 - [2020] EWHC 959 (Admin)



Neutral Citation Number: [2020] EWHC 959 (Admin)

Case No: CO/3493/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/04/2020

Before :

THE HON. MR JUSTICE HOLGATE

Between :

Hampshire County Council	<u>Claimant</u>
- and -	
Secretary of State for Environment, Food and Rural Affairs	<u>Defendant</u>
(1) Blackbushe Airport Limited	<u>First Interested Party</u>
(2) The Open Spaces Society	<u>Second Interested Party</u>
(3) Mr Peter Tipton	<u>Third Interested Party</u>
(4) Mr David Simpson	<u>Fourth Interested Party</u>
(5) Adrian Collett	<u>Fifth Interested Party</u>

Mr George Laurence QC and Mr Simon Adamyk (instructed by Hampshire County Council) for the Claimant

Mr Ned Westaway (instructed by Government Legal Department) for the Defendant
Mr Douglas Edwards QC and Mr George Mackenzie (instructed by Burges Salmon LLP) for the First Interested Party

Mr Philip Petchey (instructed by Richard Buxton Solicitors) for the Second Interested Party
Dr Ashley Bowes (instructed by Richard Buxton Solicitors) for the Third Interested Party
The Fourth and Fifth Interested Parties were not represented and did not appear.

Hearing dates: 11 & 12 February 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 on the 23rd April 2020.

.....

Mr Justice Holgate :

Introduction

1. Yateley Common was registered as common land under the Commons Registration Act 1965 (“the 1965 Act”). It was entered on the register kept by the Claimant, Hampshire County Council (“HCC”). Blackbushe Airport is operated by the First Interested Party, Blackbushe Airport Limited (“BAL”). Most of the airport lies within the area of the common.
2. On 1 November 2016 BAL made an application to HCC under paragraph 6 of schedule 2 to the Commons Act 2006 (“the 2006 Act”) to remove from the register that part of the airport which had been included as common land, referred to as an application for de-registration. HCC then referred the application to the Defendant, the Secretary of State for Environment, Food and Rural Affairs for determination, pursuant to regulation 26 of the Commons Registration (England) Regulations 2014 (SI 2014 No. 3038) (“the 2014 Regulations”).
3. The application land comprised some 46.5 hectares (or 115 acres) of operational land which included the runway, taxiways, fuel storage depot and in the south-eastern part of the site, the terminal building (including control tower), the Bushe Café and car parking. The terminal building has a footprint of about 360 sq m and an overall floor area of about 760 sq m. It is a two-storey building.
4. The Defendant’s Inspector held a public inquiry on 2 to 5 April 2019. The application was opposed by HCC. The Open Spaces Society (“The OSS”), the Second Interested Party, also appeared at the inquiry to oppose the application along with other objectors notably Mr. Peter Tipton (an individual with commoners’ rights over Yateley Common including the site of the application for de-registration), Councillor David Simpson and Councillor Adrian Collett (respectively the Third, Fourth and Fifth Interested Parties).
5. In his decision letter dated 12 June 2019 the Inspector determined that the statutory requirements for the removal of the land from the register were satisfied and so he allowed BAL’s application.
6. HCC (represented by Mr. George Laurence QC and Mr. Simon Adamyk) apply by way of judicial review to quash the Inspector’s decision. They are supported by the OSS (represented by Mr. Philip Petchey) and by Mr. Tipton (represented by Dr. Ashley Bowes). The Defendant (represented by Mr. Ned Westaway) opposes the application supported by BAL (represented by Mr. Douglas Edwards QC and Mr. George Mackenzie). I am very grateful to them for their detailed submissions, both written and oral, and for the additional research which they undertook at the court’s request during the hearing.
7. Paragraph 6 of schedule 2 to the 2006 Act provides that:-

“(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies to land where—

- (a) the land was provisionally registered as common land under section 4 of the 1965 Act;
- (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
- (c) the provisional registration became final; and
- (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.

(3) A commons registration authority may only remove land under subparagraph (1) acting on—

- (a) the application of any person made before such date as regulations may specify; or
- (b) a proposal made and published by the authority before such date as regulations may specify.”

8. In order for the land to be de-registered the Inspector had to be satisfied of all four requirements in paragraph 6(2). It was common ground that requirements (a) and (c) were satisfied. The land had been provisionally registered as part of Yateley Common on 16 May 1967 and that registration became final on 26 March 1975. Those opposing the application raised a number of other issues which were resolved by the Inspector and are not in contention in these proceedings. Accordingly, there is no longer any dispute before the court that the land covered by the terminal building and café satisfied requirements (b) and (d) continuously from 16 May 1967.

The main issues

9. The central issue for the court is whether the Inspector erred in law in deciding that the whole of the operational land of the airport (which included the application land) fell within “the curtilage of a building”, namely the terminal building, at all material times (DL 2 and 39).
10. The Inspector had the benefit of detailed submissions from the parties at the inquiry. In these proceedings they have maintained their respective contentions on the correct approach to identifying the curtilage of a building under the 2006 Act.
11. The Inspector addressed those submissions in a careful decision letter (“DL”). In DL 43 the Inspector referred to the judgment of Lieven J in Challenge Fencing Limited v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin) for the helpful summary at [18] of several factors which he said “may inform a decision on the existence and extent of curtilage in any given case”: -
- “(i) The extent of the curtilage of a building is a question of fact and degree, and therefore it must be a matter for the decision-maker, subject to normal principles of public law;
 - (ii) The three Stephenson factors must be taken into account:
 - a) Physical layout;

- b) The ownership, past and present;
 - c) The use or function of the land or buildings, past and present.
- (iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration Skerritts p. 67;
 - (iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration, but it is not a legal requirement that the claimed curtilage should be ancillary Skerritts p.67C;
 - (v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant, Sumption at para 17 and the quotation from the OED of curtilage as “A small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it”. In my view this will be one aspect of the physical layout, being the first of the Calderdale factors.”

The Inspector sought to apply these “factors” in his decision letter. For the purposes of the application to de-register under the 2006 Act it was unnecessary for him to refer to or apply principle (vi) in the judgment of Lieven J.

12. BAL submitted at the inquiry that it was appropriate for this list of factors drawn from Challenge Fencing to be applied by the Inspector. HCC did not argue otherwise, so far as the list goes, either at the inquiry or in this court. Instead, HCC has raised two specific grounds of challenge: -

- (i) The Inspector failed to apply an additional test said to be derived from the decision of the Court of Appeal in Skerritts of Nottingham Ltd v Secretary of State for Environment, Transport and the Regions [2001] QB 54, namely whether the size of the land exceeds anything which could properly be described as the curtilage of the relevant building, in this case the terminal building;
- (ii) The Inspector misunderstood the concept of “ancillarity” by deciding that both the land was ancillary to the terminal building and that the building was ancillary to the land at one and the same time.

13. The OSS’s submissions raised broader, rather more fundamental questions. There was no objection to their entitlement to do so in these proceedings. Although The OSS acknowledged that the criteria in Challenge Fencing at [18] were relevant factors to be taken into account, they submit that by themselves they were insufficient for the purposes of identifying the curtilage of a building under paragraph 6 to schedule 2 to the 2006 Act. De-registration of an area of common land results in the extinguishment of any rights of common over that land without any compensation. The OSS recognises that the word “curtilage” has not been defined by Parliament and is generally treated as not being a term of art, but they submit that the court should nevertheless grapple with the issues raised by the present case and with the risk of applications being made to deregister extensive areas of common land. They submit that if the Inspector’s approach in the present case is permissible, then de-registration might follow for more familiar examples of large open space uses, such as sport or recreation, occupying common land and making use of buildings (e.g. a golf course with its club house and training facilities). The OSS therefore

asks the court to identify the “concept” of “curtilage” adopted in the 2006 Act. They contend that it should be a stricter approach associated with conveyancing practice, the effect of which would be to confine the curtilage of a building to an area which would pass under a conveyance of that building without being expressly mentioned in the deed or transfer.

14. Mr Tipton made submissions in support of the grounds of challenge advanced by HCC and the broader case of The OSS.
15. Both the Secretary of State and BAL submit that there is no justification for adopting a stricter approach to the concept of “curtilage” than set out in Challenge Fencing at [18]. Instead, they contend that the 2006 Act itself strikes a balance between the competing interests of landowners holding property rights in or over a common and that the interpretative approach of the court to the language used by Parliament should be neutral. In their oral submissions they advanced the following overarching principle for determining whether under this legislation an area of land lies within the curtilage of a building: is the land and building associated in such a way that *they* comprise part and parcel of the same entity, a single unit, or an integral whole (see also paragraphs 13, 16-17 and 36 of the Defendant’s skeleton and paragraph 12 of BAL’s skeleton). They say that this was the test applied by the Inspector in his decision.
16. Mr. Westaway and Mr. Edwards QC also claim that the Inspector identified the test they propound at DL 54 where he said as follows: -

“The guidance which appears to be given in the above cases is that land which may form the curtilage of a building is land which is part and parcel of the building (*Trim*), or forms one enclosure with the building (*Dyer*) which serves the purposes of the building in some necessary or reasonably useful way (*Sinclair-Lockhart*) or is intimately associated with the building such that the land is part and parcel of the building and an integral part of the same unit (*Methuen-Campbell*) and does not have to be small but relative size is a relevant consideration (*Skerritts*).”

But it will be apparent that that passage identifies a very different test for identifying the curtilage of a building, namely whether *the land* in question forms *part and parcel of that building* and, as we shall see, that test was also laid down in Dyer and Sinclair-Lockhart.

17. The Secretary of State and BAL submit that the principles in Challenge Fencing at [18] are relevant to the application of the overarching principle for which they contend. They say that the Inspector has lawfully applied that approach and they resist the criticisms made in HCC’s two grounds of challenge.
18. It will be necessary to see whether the overarching principle suggested by counsel is supported by the authorities. For example, it does not appear in the list of principles at [18] of Challenge Fencing or elsewhere in that decision.
19. In view of the issues raised by the parties, I think it is convenient to deal with matters in the following order: -

The statutory framework;

The decision letter;

Curtilage;

HCC's grounds of challenge.

20. It is necessary for the court to deal with the broader issues raised by The OSS, the Secretary of State and BAL on the concept of "curtilage". They affect HCC's grounds of challenge. Furthermore, if either or both of those grounds succeed, BAL's application will fall to be redetermined. In that event, it will be necessary for any future determination to approach the matter on the correct legal basis.

The statutory framework

21. Part of the background to the legislation was helpfully summarised by Carnwath J (as he then was) in R v Suffolk County Council ex parte Steed (1996) 71 P & CR 463 and by Lord Hoffmann in Oxfordshire County Council v Oxford City Council [2006] 2 AC 674.
22. The Royal Commission on Common Land reported in 1958 (Cmnd. 462). It recommended firstly the drawing up of a register, maintained by local authorities, to provide a definitive record of all commons, town and village greens, and rights of common. Secondly, they made recommendations for the management and improvement of such land and for a general right of public access.
23. Parliament enacted the 1965 Act to give effect to the first part of the Royal Commission's recommendations. Section 1(1) provided for the registration of common land, town or village greens, and rights of common. An application for provisional registration generally had to be made by 2 January 1970. The provisional registration which followed had to be notified publicly. If that did not attract any objections, the registration became "final". In the event of objections being made, the disputes were determined by Commons Commissioners. If the provisional registration was confirmed by a Commissioner it became final. But if confirmation was refused the registration became void and was cancelled.
24. By section 10 of the 1965 Act the registration of land as a common, or as a town or village green, was to be conclusive evidence of the matters registered, as at the date of registration. The register was to be definitive, both positively and negatively: registration was conclusive evidence that on that date land was a common or a town or village green or subject to rights of common, and non-registration was conclusive evidence that it was not.
25. Section 13 of the 1965 Act, together with the relevant secondary legislation, provided for subsequent changes in the status of land, such as land becoming common land or a town or village green after 2 January 1970 (the cut-off date for making an application for registration in relation to land then qualifying), or land ceasing to be common land or a town or village green, or the extinguishment, alteration or transfer of rights of common.
26. It is important to note that s. 22(1) of the 1965 Act defined land qualifying for registration as "common land" as land subject to rights of common (whether exercisable at all times or only during limited periods) or the waste land of a manor not subject to rights of common. Accordingly, land "covered by a building" or land "within the curtilage of a building" was not excluded from the definition of common land or from registration under that Act.
27. Section 193 of the Law of Property Act 1925 provides a public right of access to certain commons for "air and exercise". Section 194 prohibited the erection of any building or

fence, or the construction of any other work, preventing or impeding access to land subject to rights of common, without the consent of the relevant Minister (see now Part 3 of the 2006 Act).

28. The second stage envisaged by the Royal Commission was not achieved until the passing of the 2006 Act. In 1983 the Countryside Commission had set up the Common Land Forum as an initial step. The Forum published a report in 1986 which identified errors in the way in which common land had been registered under the 1965 Act, because the legislation had not provided for the notification of an application for provisional registration to each individual landowner affected. Some provisional registrations had become final through the absence of any objections by landowners. For example, houses and their gardens on the fringes of a common had sometimes been included inappropriately within the area registered.
29. A private member's bill became enacted as the Common Land (Rectification of Registers) Act 1989. This allowed a 3 year period during which a landowner could notify the registration authority of his objection to the continued inclusion in the register of a dwelling-house and/or any land ancillary to that house provided that the property had satisfied that description at all times since 5 August 1945. By s.1(3) "land ancillary to a dwelling-house" was defined so as to mean "a garden, private garage, or outbuildings used and enjoyed with the dwelling-house". The notice was then referred to a Commons Commissioner for determination. Unlike paragraph 6 of schedule 2 to the 2006 Act, this provision was limited firstly to dwelling-houses, rather than all types of building, and secondly to land defined as "ancillary", rather than land "within the curtilage" of a building.
30. Following public consultation, the Government announced in 2002 that wider legislation would be brought forward to remove from registers of common land and town or village greens land which had been wrongly registered. This became the 2006 Act.
31. In fact, s. 22 and schedule 2 deal with non-registration as well as mistaken registration of land under the 1965 Act. Broadly, I accept the helpful analysis of the scheme given by Mr. Westaway and Mr. Edwards QC. Paragraphs 2 and 3 of schedule 2 deal with non-registration under the 1965 Act of respectively common land and a town or village green. Paragraph 4 deals with non-registration of waste land of a manor as common land. Paragraph 5 addresses the incorrect registration of a town or village green as common land. Paragraph 6 then deals with an application to remove land covered by a building or within the curtilage of a building from the register of common land. Paragraph 8 is a parallel provision for the removal of a building or its curtilage from the register of town or village greens. Paragraphs 7 and 9 are parallel provisions for the removal from the registers of common land and town or village greens respectively of other land which should not have been registered because it did not properly qualify for registration under the 1965 Act.
32. Each of these paragraphs in schedule 2 is only engaged if, before a date specified in regulations, an application is made by a person, or a proposal made by the registration authority, for the relevant alteration. The relevant provisions of the 2006 Act have been rolled out in two stages. They were initially introduced on 1 October 2008 as a pilot scheme in the areas of seven registration authorities (The Commons Registration (England) Regulations 2008 – SI 2008 No. 1961). The 2014 Regulations (see paragraph 2 above) came into force on 15 December 2014. They brought two further registration authorities within the scheme. The 2014 Regulations also apply to any application to amend a register kept by *any* authority under paragraphs 6 to 9 of schedule 2 (see Regulation 1(3)).

Paragraph 14(1) of schedule 4 to the 2014 Regulations sets deadlines for the making of an application to alter a register under schedule 2, namely 31 December 2020 for authorities to which the 2008 Regulations applied and 15 March 2027 for the remaining authorities, including HCC (see also schedule 8 to the 2014 Regulations). The same deadlines apply to proposals made by a registration authority (Regulation 18(2)).

33. There is therefore a finite period of time within which action may be taken under schedule 2 to the 2006 Act to remove land from a register. Those who benefit from rights of common or who enjoy access to common land or to a town or village green are not at risk of de-registration at any time in the future. The legislation has struck this balance between competing interests and in the interests of legal certainty.
34. The scheme requires applications to be publicised and provides for public participation, as occurred in the present case (regulations 21 to 24). Representations may be made (regulation 25). Certain applications have to be determined by the Planning Inspectorate (regulation 26). A public inquiry or a hearing may be held with the various procedural safeguards that they provide (regulations 27 to 34). There is therefore a full opportunity for representations from all relevant interests to be taken into account and evaluated.
35. For an application made under paragraphs 6 or 8 to succeed it must be shown that the land to be de-registered has been covered by a building, or fallen within the curtilage of a building, continuously since the date of provisional registration under the 1965 Act, which is likely to be a period of some 50 years or more. Save for fairly straightforward or obvious cases, that is likely to be a challenging requirement to satisfy, particularly in relation to the “curtilage” limb where the area of land is substantial. The various factors which may affect the decision-maker’s judgment on the extent of the curtilage will have to be considered throughout that lengthy period of time.
36. If a building has existed for 50 years or so it will have been impossible in practice for any rights of common to have been exercised over that area. It is also unlikely that such rights will in practice have been exercised over the curtilage of most buildings. In any event, remedies would certainly have been available during that period to enable such rights to be asserted and protected if that had been thought appropriate. Thus, in a case to which the de-registration provisions in paragraphs 6 or 8 of schedule 2 apply, it is unlikely that there would be any significant value attributable to rights of common theoretically exercisable, but not in practice exercised for a long period of time, over the area to be de-registered. It is therefore understandable that Parliament did not provide a right to compensation for the extinguishment of rights of common under those provisions.
37. Indeed, the argument put forward by The OSS cuts both ways. The registration of a right of common under the 1965 Act over land covered by a building or over the curtilage of a building interferes with the property rights of that landowner. But the legislation has never provided any compensation for that dispropriatory effect.
38. This last point is reflected in paragraph 14(3) of schedule 4 to the 2014 Regulations. An application to correct the non-registration of common land or a town or village green under paragraphs 2 or 3 of schedule 2 may “only include land that is covered by a building or which is within the curtilage of a building if the owner of that land consents to its registration”. By this provision Parliament has avoided the interference with the property rights of landowners which the 1965 Act omitted to address and which has required correction through paragraphs 6 and 8 of schedule 2 to the 2006 Act. Paragraph 14(3) has

made it unnecessary for the 2006 Act to provide compensation for landowners affected by applications to correct non-registration under the 1965 Act.

39. Plainly, in the 2006 Act Parliament has carefully balanced the interests of the owners of rights of common and the users of commons (or town or village greens) and the interests of landowners. I do not accept Mr. Petchey's submission that s.3 of the Human Rights Act 1998 would require the term "curtilage" in the 2006 Act (and the related regulations) to be interpreted restrictively so as to be compatible with Article 1 of the First Protocol. The merits of the argument under A1P1 pull in opposite directions because of the competing property rights of landowners and owners of rights of common. I do not accept that s.3 would entitle the court to adopt an interpretation which would favour one group of A1P1 rights rather than another. Certainly, Mr. Petchey did not show the court an authority which would allow the court to make that sort of choice, even assuming that it was able to do so on the material before it.
40. The sensitivity of this issue extends to other legislation providing for public access to open spaces. The Countryside and Rights of Way Act 2000 provides for public access to the countryside, more particularly to "access land" as defined in s.1. There is excluded from such land (inter alia): -

"land covered by buildings or the curtilage of such land."

The OSS's narrower approach to the concept of the "curtilage" of a building would potentially broaden the extent to which the right of access under the 2000 Act could adversely affect the position of landowners.

41. Because the 2006 Act recognises that land within the curtilage of a building should not be registered without the owner's consent, and has inappropriately been registered in the past under the 1965 Act without that consent, I do not accept the submission of Dr Bowes that s.16 of the 2006 Act affects the approach to be taken to the concept of "curtilage" in the de-registration provisions. Section 16 enables the owner of land registered as common land or as a town or village green to apply for de-registration subject to (1) providing replacement land where the area of the application site is greater than 200 sq m and (2) consideration of the rights of others over the land, the interests of the neighbourhood and the public interest. He suggested that giving too wide an ambit to "curtilage" in paragraphs 6 and 8 of schedule 2 to the Act would undermine the operation of s. 16. But that argument begs the question whether land was appropriately registered in the first place. Parliament's view expressed through the 2006 Act is that a building and its curtilage (if any) ought not to have been so registered. The operation of s.16 does not affect the question whether a wide or narrow, strict or less strict, approach should be taken to the concept of curtilage.
42. In my judgment, the balance between interests of landowners on the one hand and the interests of owners of rights of common and the users of commons or town or village greens on the other, has been set by Parliament and it is not for the court to adopt an approach to "curtilage" which reflects its perception of where that balance should lie. That is a matter for Parliament. I agree with Mr Edwards QC that that was the approach recently taken by the Supreme Court when it examined another part of the 2006 Act (R (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs [2020] 2 WLR 1 at [11]).

43. Mr. Petchey based his contention that a narrower approach to “curtilage” should be adopted where legislation has an expropriatory or dispropriatory effect upon authorities dealing with leasehold enfranchisement, notably Methuen-Campbell. However, Mr. Petchey, commendably, discharging his duty to the court, subsequently discovered and referred to Cadogan v McGirk [1996] 4 All ER 643 where the Court of Appeal rejected the submission that enfranchisement legislation, specifically the Leasehold Reform, Housing and Urban Development Act 1993, should be treated as expropriatory in nature and thus strictly construed (citing Jones v Wrotham Park Settled Estates [1980] AC 74, 113; Manson v Duke of Westminster [1981] QB 323, 332). Although the legislation might be expropriatory of the landlord’s interest to some extent, it was also passed in order to confer certain advantages on tenants. It was the court’s duty to construe the legislation fairly and, where possible, to give effect to those advantages which Parliament intended tenants to enjoy (pp. 647-8). Cadogan also shows that the legal approach in that case to “appurtenance” may be highly sensitive to the specific provisions enacted by Parliament (pp. 651d to 652a).
44. For all these reasons, I do not consider that the potential effects on property rights would justify taking either a wider or narrower approach to “curtilage” as that term is used in the 2006 Act. This factor has an entirely neutral effect on the approach which should be adopted by the court. Furthermore, it will be seen below that dispropriatory or expropriatory considerations have not had a substantial influence on the decisions in relevant authorities on what legal principles should be adopted.

The decision letter

45. The Inspector summarised the history of the airport at DL 6 to 15. The current airport forms only part of a much larger area of land requisitioned during World War II for use as an RAF airfield. There were then three runways orientated to allow take-off and landing in all wind directions, hangars and other facilities.
46. In 1947 RAF Blackbushe was taken over by the Ministry of Civil Aviation and became Blackbushe Airport. In 1952 the eastern part of Yateley Common was sold to the Parish Council for use as recreational open space. In 1953 the Ministry built a terminal building in what is now the south-eastern corner of the airport. In 1958 a new arrivals hall was added to the eastern end of that building.
47. In 1960 the Airport was closed and the land was derequisitioned, but the runways and terminal building remained *in situ*.
48. In 1962 the airfield was reopened for general aviation purposes and a clubhouse erected, which subsequently became the Bushe Café. The sections of runway in the eastern part of the site ceased to be used in about 1964. The terminal building and the café were present when the common was provisionally registered on 16 May 1967.
49. The ownership of the airport changed hands in 1973 and the new owner erected hangars in the north-western part of the site. They were used to provide maintenance facilities and parking for aircraft using the airport as a home base.
50. In 1985 the airport was sold to a new owner. The use of the two northern runways ceased pursuant to the terms of an agreement under s.52 of the Town and Country Planning Act 1971. Thus, the operational area of the airport was reduced, although some of the hangars

to the north-west continued to be used in connection with the airport until 2015. At that stage the operational area of the airport was reduced again, this time to its current area.

51. In 1996 the eastern end of the terminal building had been demolished. That part of the terminal building which remains has always been present since 1953 and within the operational area of the airport, albeit that that area has contracted over time.
52. The Inspector considered the meaning of curtilage in DL 41 to 55. He identified many of the authorities to which he had been referred and said that none of them provided a definition of “curtilage”; rather they provided guidance on factors which may be relevant in determining what does or does not form the curtilage of a building (DL 41). As I have mentioned, the Inspector identified relevant factors from the judgment in Challenge Fencing at [18] (DL 43).
53. The Inspector summarised the submissions of The OSS at DL 44 to 46. They contended that for the 2006 Act “curtilage” should be taken to have a conveyancing meaning, a “part and parcel test” which requires a curtilage to be a small area of land. The broader approach to curtilage in listed building control, based on a functional relationship between the listed building and adjacent land should not be adopted.
54. The Inspector summarised BAL’s case at DL 47 to 48. They submitted that the authorities do not provide two meanings of curtilage. Instead: -

“In the Applicant’s view, land lies within the curtilage of a building where the relationship is such that they can be said to be ‘*part and parcel*’ of the same entity or an ‘*integral whole*’ or where they are so inter-related to form a single unit. ‘Smallness’ was not a requirement for curtilage and a primary/ancillary relationship between the building and land was not a legal requirement. Consideration should be given to various factors including the functional relationship of the land to the building, physical layout and ownership.”
55. Thus a key part of BAL’s case was that land lies within the curtilage of a building where they, that is the land *and* the building, can be said to be part and parcel of the *same entity* or so inter-related as to form a single unit. That submission was maintained before this court. It was the approach which the Inspector decided to adopt.
56. The Inspector noted at DL 49 the absence of a statutory definition of “curtilage” and the statement of Robert Walker LJ (as he then was) in Skerritts (at p.676) that lawyers themselves do not have a precise idea of what “curtilage” means; it is a question of fact and degree. In DL 50 the Inspector noted certain passages from Methuen-Campbell.
57. The Inspector referred to Challenge Fencing as having decided that the factors set out in [18] apply to commercial premises as well as to dwellings and listed buildings (DL 51).
58. The Inspector concluded that the authorities do not suggest that there are separate “conveyancing” and “listed building” meanings of “curtilage” (DL 52). “Smallness” is a relative concept, so that the curtilage of a modest house may itself be of a modest size, whereas the curtilage of an industrial or commercial building may or may not be so (DL 53).

59. Although in DL 54 the Inspector summarised guidance given in several cases (quoted in paragraph 16 above), in DL 55 he stated that he thought it appropriate to determine the issue of curtilage in the present case by reference to the factors cited in DL 43 from Challenge Fencing. The Inspector then proceeded to apply those factors one by one.
60. In DL 56 to 64 the Inspector considered “physical layout”, including fencing and boundary treatments. He concluded that the terminal building and the operational land of the airport (including the application land) had remained one enclosure within which the physical layout had not changed materially over the relevant period.
61. In DL 65 to 66 the Inspector found that both the airport and the application land had been owned as a single entity at all material times.
62. In DL 67 to 71 the Inspector addressed “the use or function of the land and buildings past and present”. The terminal building formed the hub of the operation of the airport as it housed the administrative and support facilities of the airport together with the control tower from which aircraft movements were controlled. The terminal building had provided a base for the airport’s own staff and other aviation interests. The terminal building has provided accommodation for airport reception, passengers, airport operations management, and air navigation services for the airport. The Bushe Café had formed an essential part of the airport. The use of the terminal building and the application land had remained unchanged over the relevant period.
63. The Inspector considered “relative size” in DL 72 to 76. He noted at DL 74 HCC’s submission that there must come a point when the land said to comprise the curtilage of a building is too large to be treated as its curtilage and that on any reasonable view the application land was too big to be the curtilage of the small building located in its south-eastern corner.
64. The Inspector’s conclusions on this issue were as follows: -
- “75. The size of the curtilage in relation to the building of which it forms part is a relevant matter, but so too is the purpose to which the building and land are put. In this case the operational area of the airport may appear excessive given the relatively small size of the Terminal Building, but in the context of the purposes to which the building and land are put I do not consider that to be the case. The building and land form part of a general aviation airport. A functioning airport (even a relatively small one such as Blackbushe) will by its nature require a significant quantity of land for the provision of runways, taxiways, hangarage or storage, fire and rescue services, fuel storage and dispensing facilities, customs and quarantine facilities and so forth.
76. The evidence before me is that the operation of the airport and the use of the facilities on its land is and has been controlled and directed from the Terminal Building which is, as the OSS point out, a relatively small building on the south-eastern side of the Application Land. Although the claimed curtilage may appear wholly disproportionate to the physical size of the Terminal Building, when consideration is given to the land and the building in the context of an operational airport, the relative size of the application land to the Terminal Building is proportionate to the function and purpose to which the building and land are put.”

65. In this part of the decision the Inspector assessed the relative size of the application land by taking into account the purpose to which both the land and the building were put. It is also significant that he considered “the land and the building in the context of an operational airport” and “the function and purpose to which the building and land are put”, confirming that he was applying the approach which had been suggested by BAL (DL 47). He took the same approach when expressing his final conclusions on curtilage at DL 87 (see paragraph 70 below).
66. The Inspector addressed the “ancillary” factor at DL 77 to 82. BAL’s case was that the terminal building was at the heart of the operations carried on at the airport and that the aviation related infrastructure (runways, taxiways, aircraft parking areas, hangars, and public car parks) “had a functional relationship to the terminal building and operated by virtue of the activities which took place within” that building (DL 78). The objectors submitted that the use of the terminal building was ancillary to the use of the airfield and not the other way round (DL 79).
67. It is necessary to set out the Inspector’s conclusions on this issue in full as it is apparent that this formed a key part of his overall reasoning on “curtilage”:-

“80. The Council submitted that the land and the building may each serve the other’s purpose in some necessary or reasonably useful way, although such functional equivalence would not give rise to the application land being the curtilage of the Terminal Building. The applicant’s response was that there was no difference between ‘functional equivalence’ and the land being said to be ‘part and parcel’ of the same unit; if there was ‘functional equivalence’ between the operational land and the Terminal Building, it demonstrated that the land and the building formed an integral part of the same unit.

81. In addition to co-ordinating the safe arrival and departure of aircraft it is evident that the Terminal Building provides administrative and technical support to the various activities at the airport. Those functions performed within the Terminal Building (the co-ordination of on-site fire and safety provision, the medical assessment of airport staff, customs and quarantine services for international flights for example) which are not directly related to the safe take-off and landing of aircraft are nonetheless part and parcel of the safe and efficient operation of the airport.

82. Although the Council described this state of affairs as a ‘*functional equivalence*’ and that as such the land could not be curtilage and the objectors described the land and buildings as having a ‘*symbiotic relationship*’, such relationships indicate that whilst there may be an ancillary relationship of the building to the land, there is also an ancillary relationship of the land to the building. As set out in *Challenge Fencing*, it is not a legal requirement for there to be an ancillary relationship although such a relationship exists in this case. I consider that the operational land of the airport and the Terminal Building are part and parcel of the same unit and that they are integral parts of the same unit.”

68. Thus, the Inspector adopted once again the approach which had been put forward by BAL (summarised at DL 47). He considered whether the land *and the building* formed part and parcel of the same unit. He considered that both the building was ancillary to the land and the land was ancillary to the building. He referred to this “functional equivalence” as

demonstrating that the land and building formed an integral part of the same unit. As when he was dealing with “relative size”, the Inspector considered the functional equivalence of the land and building to relate to an operational airport.

69. The Inspector summarised his overall conclusions on the curtilage issue in DL 83:-

“Taking all of the above into account, I find that the operational area of the airport was and is associated with the Terminal Building to such an extent that the operational area was and is part and parcel with the building and an integral part of the same unit; that it forms one enclosure with the building and serves the purposes of the building in some necessary or reasonably useful way. I consider that the operational area of the airport formed and forms the curtilage of the Terminal Building. It follows that I conclude that the Application Land, which has at all material times been part of the operational area of the airport, can be properly described as being within the curtilage of the Terminal Building.”

70. The Inspector’s final conclusion on the status of the application land appears in DL 87:-

“The assessment of curtilage is a matter of fact and degree and the relative size of the land claimed as curtilage has to be seen in the context of the use to which the building and land is put. An operational general aviation airport will occupy a significant area of land and that land is likely to dwarf the size of the Terminal Building associated with it; such is the nature of airports. At the time of provisional registration in 1967, the operational area of the airport was much greater than that which is operational today. For the reasons set out above, I consider that the Application Land was within the operational area of the airport in 1967 which at that time was the curtilage of the Terminal Building such that paragraph 6(2)(b) is satisfied.”

Curtilage

71. As a starting point it is helpful to have in mind Parliament’s decision to take a different approach in the 2006 Act from the temporary provisions of the 1989 Act (see paragraph 29 above). First, it made de-registration available not only for dwelling-houses but also buildings generally. Second, de-registration is available for land within the curtilage of a building. Parliament chose not to repeat the approach in the 1989 Act which had referred to land “ancillary to” a dwelling-house, meaning a garden, private garage or outbuildings “used and enjoyed” with the dwelling-house. The mere fact that land is “used and enjoyed” with a building does not suffice to make it part of the curtilage of that building (see e.g. Methuen-Campbell).

Parliamentary material

72. In R v Secretary of State for the Environment ex parte Spath Holme Ltd [2001] 2 AC 349 the House of Lords emphasised the need to adhere to the “stringent” conditions laid down in Pepper v Hart [1993] AC 593 for the admissibility of ministerial statements in Parliament as an aid to construing legislation. None of the material placed before the court in this case satisfies those tests. It provides no real assistance at all.

Ordinary English meaning

73. It was submitted that “curtilage” is not a term of art; rather it is a word which should be given its “ordinary meaning”. The Oxford English Dictionary gives this definition:-

“A small court, yard, garth, or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its out-buildings. Now mostly a legal or formal term, but in popular use in the south-west, where it is pronounced, and often written, *courtledge*.”

74. This provides only some help because the definition recognises that to an extent “curtilage” is a legal expression. It is not simply an ordinary English word. Some legislation requires the concept to be applied not just to dwelling-houses but to buildings of all kinds. Case law has established that the curtilage of a building need not be confined to a small area of land. I also note that the curtilage of a building is land which is attached to, and forms one enclosure with, that building, but that concept needs to be understood by examining the case law carefully.

75. The related terms “messuage” and “appurtenance” cast further light on the meaning of “curtilage”. A “messuage” means the land occupied by a dwelling-house and *its* appurtenances, or a dwelling-house together with *its* outbuildings and the adjacent land assigned to *its* use, the emphasis being on the appurtenances, outbuildings and use *of* the dwelling-house (or building). Likewise, “appurtenance” denotes something *belonging to* another, or a minor property or right *belonging to* another more important property or right.

76. Legal dictionaries provide a similar explanation. So, for example, Jowitt’s Dictionary of English Law 5th ed. explains that by a grant by deed of a messuage, the curtilage passes without being expressly mentioned.

Statutory context

77. A number of authorities state that the sense in which “curtilage” is used is sensitive to the language used by Parliament and the context or purpose of the legislation (e.g. Roskill LJ in Methuen-Campbell [1979] QB at 539E).

78. For example, Pilbrow v Vestry of St. Leonard, Shoreditch [1895] 1 QB 433 was cited for the proposition that an area of land must be relatively small in extent for it to qualify as curtilage land (p. 438). But there the court was concerned with the distinction under public health legislation between a “drain” and a “sewer” for the purposes of deciding whether expenses were to be borne by the owners of buildings or by local ratepayers. The statute defined “sewer” in part by excluding anything falling within the definition of a “drain”. A “drain” referred to any drain for the drainage of only one building or “premises within the same curtilage”. The majority of the Court of Appeal decided that in this context “curtilage” had not been used in a conveyancing law sense. It was not limited to a single building with its outbuildings. It could also include several buildings which have a curtilage which was common to all. In that context it was necessary to consider the mode of building, the purpose for which the buildings had been erected and how they were used. It was held that the drains in question serving two blocks of flats separated by a relatively small yard related to “premises within the same curtilage”. On the other hand, drainage serving a large number of buildings erected around a square would not relate to “premises within the same curtilage”.

79. Pilbrow does not assist in the present case because the language used in the 2006 Act is so very different. Here the issue is whether land qualifies as forming the curtilage *of a building*, not drainage serving “premises [comprising more than one building] within the same curtilage”. As the cases show, the words chosen by Parliament, “the curtilage of a building”, are of critical importance.

Landlord and tenant cases

Methuen-Campbell v Walters

80. The Leasehold Reform Act 1967 gave certain lessees the right to acquire the freehold or an extended lease of the “house and premises” they occupied. “Premises” referred to “any garage, outhouse, garden, yard and appurtenances” let with the house (s.2(3)).
81. The lease in Methuen-Campbell v Walters [1979] QB 525 demised a dwelling together with a garden of 0.5 acre and an area of rough pasture, a paddock, of 1.6 acres. The landlord appealed against the decision in the County Court that the paddock should be included in the claim to enfranchise because it was an appurtenance of the house ([1979] QB at 532A). The Court of Appeal held that the paddock was not an appurtenance.
82. Goff LJ pointed out that originally land could not be an appurtenance to other land; only an incorporeal hereditament could be an appurtenance. However, by the time of Evans v Angell (1858) 26 Beav. 202 an appurtenance to a property was treated as anything, including land, which would pass under a conveyance of that property without being expressly mentioned. By the time of Trim v Sturminster District Council [1938] 2 QB 508 it was settled that an appurtenance was confined to the curtilage of the property (1979 QB at 533-5). Relying upon the dictionary definition of “curtilage”, and treating its application as a question of fact, Goff LJ decided that the “comparatively extensive” area of pasture which had been divided from the house and garden, could not be treated as part of the curtilage of the house. The paddock was no more than a valuable amenity for the occupier. The fact that it had been let together with the house and garden as one unit, albeit relevant, was not of much weight. These factors were insufficient for the paddock to form part of the curtilage of the dwelling ([1979] QB at 536-8).
83. Roskill LJ took essentially the same approach as Goff LJ ([1979] QB at 540-1).
84. Buckley LJ agreed that although “appurtenance” may include land, it may not include anything which would not pass on a conveyance of the principal subject matter without being specifically mentioned, and therefore could only extend to land or buildings within the curtilage of the principal subject-matter (p.543A). This approach has sometimes been referred to as the “conveyancing approach” to curtilage. But I do not think that that label is a helpful way to understand the principles in Methuen-Campbell and similar authorities for identifying the curtilage of a building. Buckley LJ pointed out that the fact that a conveyance of a parcel of land described in general terms will pass all the component parts of its curtilage without express mention is simply the legal *consequence* of those parts falling within that curtilage. That conveyancing consequence is not a criterion by which the extent of the curtilage should be identified (544C-D).
85. Instead, the correct approach is set out in the following oft-cited passage from the judgment of Buckley LJ (543F to 544D). This is also one of the key passages upon which Mr Westaway and Mr Edwards QC sought to base their overarching principle:-

“What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole. The conveyance of that messuage or parcel by general description without reference to metes or bounds, or to the several component parts of it, will pass all those component parts sub silentio. Thus a conveyance of The Gables without more, will pass everything within the curtilage to which that description applies, because every component part falls within the description. The converse proposition, that because an item of property will pass sub silentio under such a conveyance of The Gables, it is therefore within the curtilage of The Gables, cannot in my opinion be maintained, for that confuses cause with effect.”

86. When this passage is read properly and as a whole it is impossible to derive the overarching principle for which the Defendant and BAL contend, and which the Inspector applied at DL 75-6, 82-3 and 87. Buckley LJ did not decide that an area of land is within the curtilage of a building if it is associated with a building in such a way that the *land and building* comprise part and parcel *of the same entity*, a single unit, or an integral whole. Nor did he suggest that “part and parcel”, “single unit” and “integral whole” were synonymous terms to be used in that manner (see para. 22 of BAL’s opening submissions at the inquiry; paras. 86-90 of BAL’s closing submissions and para. 12 of BAL’s skeleton).
87. Instead, the issue is whether an area of land is so intimately associated with a building that that land forms part and parcel *of the building*. That is consistent with the ordinary English meaning of “curtilage” and “appurtenance” as explained in the dictionaries. In the same vein, I note from another of its decisions cited by the Court of Appeal, Clymo v Shell-Mex & BP Limited (1963) 10 RRC 85; [1963] RVR 471, that the legal concept of

“appurtenance” is something *belonging to* a house or building, although not necessarily used for the purposes of that house or building (pp. 473 and 474).

88. Buckley LJ went on at p. 544 to address ancillary buildings, structures or areas, such as outhouses, a garage, a driveway or a garden and said that *in so far as* they fall within one messuage or parcel, they would fall within one curtilage or would constitute an integral whole. But that passage cannot be taken as departing from the clear test he had already laid down, namely whether land is so intimately associated with a building as to form *part and parcel of that building*. That was the test to which Buckley LJ returned at p. 545A when, acknowledging that the paddock provided an amenity for and enhanced the value of the house, he added the key words “but the paddock can serve that purpose perfectly well without being part and parcel of the house”.
89. In the present case the relevant question posed by the judgment of Buckley LJ ought to have been whether the application land was so intimately associated with the terminal building as to form part and parcel of that building, not whether that land and building together formed *part and parcel of the same entity*. That seemingly slight change in language introduced in BAL’s submissions, and applied by the Inspector, would produce a very different outcome in cases like Methuen-Campbell and, indeed, generally.
90. I note that Buckley LJ regarded the 1967 Act as having a dispropriatory, although not confiscatory, approach and so any doubt in the construction of the legislation should be resolved in favour of “the party to be dispropriated”, i.e. landlords (p. 542F). But there is nothing in his subsequent reasoning to suggest that he in fact applied that approach. There is no reference to any doubt or ambiguity needing to be resolved in this way.
91. Goff LJ accepted that the 1967 Act was expropriatory, but he said that not too much weight should be given to that factor; simply that the court should “not be ready to give too liberal a construction to the words defining what the tenant is given a right to purchase.” He returned to that theme at p.536F-G when he rejected the wide approach to “appurtenance” for which the tenant had contended (“any land used and occupied with, or to the benefit of, the house, either as a matter of convenience or as an amenity” – p 535G). He held that that approach was inconsistent with the law on “appurtenance” previously laid down by the Court of Appeal in Trim v Sturminster Rural District Council [1938] 2 KB 508. In that case a wide interpretation could only have assisted the landowner to resist the interference with his property rights by the statutory demolition order served by the local authority, but the court nevertheless gave the term its “ordinary meaning”. Goff LJ continued at p. 536G by referring to cases where the concept of “curtilage” has been used when applying legislation for protecting landowners faced with the expropriation of part of their land (i.e s. 92 of the Lands Clauses Consolidation Act 1845, now s. 8 of the Compulsory Purchase Act 1965), but they did not support a wider approach to that term.

Dyer v Dorset County Council

92. The Housing Act 1980 gave a tenant of a local authority’s dwelling-house a right to buy his home except where (inter alia) the house lay within “the curtilage of a building” held by the authority mainly for purposes other than housing. In Dyer v Dorset County Council [1989] QB 346 the County Council’s “building” (or collection of buildings) formed an agricultural college. The house let to Mr Dyer by the authority was located on the edge of the college grounds. The Court of Appeal upheld the judge’s decision that the house did not fall within the curtilage of any of the college’s buildings (whether taken individually or

as a whole) and so was not excluded from the tenant's right to buy. The judge added that he would have reached the opposite conclusion if the exclusion had been expressed by Parliament so as to refer to the curtilage of the college or institution (i.e. the overall site used for that purpose or function) rather than the curtilage of a college "building" ([1989] QB at p. 353F).

93. Lord Donaldson MR based his decision on Methuen-Campbell, in particular the passage cited from the judgment of Buckley LJ. He emphasised that the question was whether Mr. Dyer's house was within the curtilage of the *buildings* of the college, not the curtilage of the *college* (p.357G). Mann LJ took the same approach, adding that the exclusion from the right to buy had not been phrased so as to relate to the grounds of an institution (p.359D).
94. Nourse LJ also regarded the exposition by Buckley LJ in Methuen as authoritative (p.358D-E). He stated that "an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is added" (emphasis added).
95. Thus, the overarching principle applied by the Inspector, and for which the Defendant and BAL contend, is inconsistent with the test laid down in Dyer.
96. In Skerritts the Court of Appeal decided that the reasoning in Dyer had gone further than was necessary in so far as the court suggested "that the curtilage of a building must always be small or that the notion of smallness is inherent in the expression" ([2001] QB at 67A). But that does not in any way detract from the principles in Dyer set out above, and which were applied in Barwick (see below).
97. In Dyer the statutory provision which used the term "curtilage of a building" was inserted to provide protection to a local authority facing the compulsory sale of its property under the right to buy legislation. So it was Dorset County Council which urged the court to give a broader scope to "curtilage" than would otherwise be the case (p. 357C-D, 359A). The court refused to do this. So it cannot be said that in Dyer, or indeed in Barwick, dispropriatory considerations were relied upon by the court in support of its decision to follow the principles laid down by Buckley LJ in Methuen-Campbell.

Barwick and Barwick v Kent County Council

98. Barwick and Barwick v Kent County Council (1992) 24 HLR 341 considered essentially the same statutory provision as in Dyer, although at that stage it was contained in the Housing Act 1985. The issue was whether the appellant's dwelling was excluded from the statutory right to buy because it lay within the curtilage of a building held by the local authority for the purposes of a fire station. The station building had a large yard to the rear, beyond which there was a row of garages. It was surrounded by a high wall, with a gate which led on to a path to which ten houses had access. This housing had been built around the same time as the fire station to provide accommodation for the firemen working there. Each of the houses had a garden and its own clearly defined curtilage. The Court of Appeal allowed an appeal by the tenant, holding that his dwelling did not lie within the curtilage of the fire station building and so was not excluded from the right to buy.
99. Giving the leading judgment of the court, Parker LJ referred to the judge's finding that the group of houses, the fire station and its yard formed a "functionally single unit" (p.344), meaning that the fire station could operate functionally with the housing to provide a fire

service. But he held that that was not the relevant question, which was whether the houses (or any of them) could be regarded as falling within the curtilage of “the fire station building” (p.344). Thus, the court explicitly rejected the overarching principle for which the Defendant and BAL contend.

100. The court then followed the relevant passages in Methuen-Campbell and Dyer to which I have referred. The true issue was whether the appellant’s house fell within the curtilage of the fire station *building*, not the curtilage of the *fire station* (p.346). The latter and wider approach involved an irrelevancy, namely the curtilage of all areas of land devoted to the purposes or functions of a fire station. On the facts of that case, and applying the ratio in Dyer, it was held that the dwelling was not within the curtilage of the fire station *building*.

Listed building control

101. The definition of a listed building is a term of art. It is not simply a building included in the list of buildings of special architectural or historic interest under s.1(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Building Act 1990”). Instead, s.1(5) provides an extended definition:-

“In this Act “listed building” means a building which for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act –

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall, subject to subsection (5A)(a), be treated as part of the building.”

That extended definition applies in the context of the controls applied by the Listed Building Act 1990 to, for example, the demolition, alteration or extension of listed buildings (ss.7-9).

Debenhams plc v Westminster City Council

102. In Debenhams plc v Westminster City Council [1987] AC 396 the House of Lords held that “structure” in limbs (a) and (b) of the definition of “listed building” must be restricted “to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage” (p. 403F-G). It adopted this “ancillary test” in order to avoid the inclusion of a building in the statutory list from having too wide an effect, for example, by bringing within the scope of the listing another building complete in its own right, which is not subordinate to the listed building. The House of Lords gave the example of a terrace of houses only one of which is listed for historical interest.

103. It is common ground that according to Methuen-Campbell, in particular the judgment of Buckley LJ, there is no legal requirement for land to be ancillary to a building in order to form part of its curtilage. Ancillariness may be taken into account as a relevant factor, but it is not a pre-requisite for land to qualify as falling within a curtilage. In Debenhams the

House of Lords only decided that objects or structures cannot fall within the extended definition of a listed building unless they are ancillary to that building. It did not lay down an “ancillarity” criterion for the concept of “curtilage”. Indeed, the ancillarity criterion applies to both limbs (a) and (b) of s. 1(5). It qualifies the structures or objects which are either fixed to or within the curtilage of the building entered in the statutory list.

The Calderdale case

104. In Attorney General ex rel. Sutcliffe v Calderdale Borough Council (1982) 46 P & CR 399 the Court of Appeal decided that a terrace of cottages attached to a mill included on the statutory list of buildings of special architectural or historic interest formed part of that listed building, either because the terrace was a structure “fixed” to the mill or, if not so fixed, was a structure within the curtilage of the mill. In Debenhams the House of Lords was not prepared to accept the width of the reasoning in Calderdale. They considered the decision to have been correct solely on the basis that the terrace of cottages was ancillary to the mill, thereby satisfying the additional test which they held should qualify “structures” ([1987] AC at 403G and 411C).

105. Delivering the leading judgment in the Court of Appeal (with which the other members of the court concurred), Stephenson LJ said at (1982) 46 P & CR 399, 405:-

“I would approach section 54(9) [of the Town and Country Planning Act 1971, now s.1(5) of the Listed Building Act 1990], its construction and application, and both its limbs with the obvious reflection that the preservation of a building of architectural or historic interest cannot be considered or decided, either by the Secretary of State or by those specialists he is required by section 54(3) to consult, in isolation. The building has to be considered in its setting, as is made clear by the amendment to section 56(3), and by paragraph 25 of circular no. 23/77, as well as with any features of special architectural or historic interest which it possesses. The setting of a building may consist of much more than man-made objects or structures, but there may be objects or structures which would not naturally or certainly be regarded as part of a building or features of it, but which nevertheless are so closely related to it that they enhance it aesthetically and their removal would adversely affect it. Such objects or structures may or may not be intrinsically of architectural or historic interest, or worth preserving but for their effect on a building which is of such interest. But if the building itself is to be preserved unless the Secretary of State consents to its demolition, so also should those objects and structures be. That object is achieved by section 54(9) requiring them to be treated as part of the listed building. They do not thereby become absolutely immune from demolition, but the power is there to give or withhold consent to the demolition of all or some of them. If that is the right approach, it indicates a broad approach to the subsection as a whole and a construction of it which will enable the Secretary of State to exercise his discretion to grant or withhold listed building consent over a wide rather than a narrow field.”

106. Thus, the Court of Appeal held that a structure or object which is so clearly related to a listed building that its removal would adversely affect the interest of that building, should be treated as falling within the extended definition of “listed building”, even if that item would not otherwise be regarded as part of, or one of the features of, that building (subject now to the “ancillary” test laid down in Debenhams). The object was to promote the

preservation of listed buildings. That was said by the Court of Appeal to justify a broad approach to s. 1(5) as a whole.

107. However, I note that the extended definition of “listed building” only brings “structures” or “objects” within the scope of the listing, not, for example, a garden or open land. In other words, s. 1(5) does not treat every aspect of the curtilage of a listed building as falling within that definition. Consequently, the controls in ss. 7 to 9 do not apply to any item of work carried out anywhere within the curtilage of a listed building (notwithstanding s. 66(1)). Those controls are specifically targeted at works to a listed building, or other qualifying structures or objects, because of their effect on the special architectural or historic interest of that building.

108. By contrast, the non-registration and de-registration provisions in the 2006 Act are not concerned with the preservation or protection of a building located on a common (or the ancillary objects or structures within its curtilage). Self-evidently, such a building may have no architectural or historic interest. For the same reasons the 2006 Act refers to the “curtilage of a building” without concentrating solely on any “objects” or “structures” it may contain. These differences in language, context and statutory purpose are so substantial that the listed building code is not truly analogous to the provisions in the 2006 Act dealing with de-registration, or correcting the non-registration, of common land or towns or village greens. It follows that care must be taken to see whether any principle laid down on “curtilage” specifically in the context of listed building control can be read across to these provisions, particularly if the approach for that control differs from the approach generally adopted in other authorities.

109. On the subject of “curtilage” Skinner J had said at first instance:-

“ In my judgment, the word curtilage has to be construed having regard to the fact that the 1971 Act as a whole deals with town and country planning and that the part of the Act we are concerned with deals with buildings of architectural or historical interest. I have to ask myself, from a planning rather than a strict conveyancing viewpoint, whether the buildings within the alleged curtilage form a single residential or industrial unit and, in this instance, whether *the mill and the terrace form part of an integral whole*. I reject the strict conveyancing viewpoint because, if it were adopted, evasion of the Act would be easy to achieve.” (emphasis added)

110. At pp. 406-7 Stephenson LJ stated:-

“There was, I think, at the end of the argument before us agreement that three factors have to be taken into account in deciding whether a structure (or object) is within the curtilage of a listed building within the meaning of section 54(9), whatever may be the strict conveyancing interpretation of the ancient and somewhat obscure word “curtilage.” They are (1) the physical “layout” of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage.”

111. At pp.407-8 Stephenson LJ cited nearly the whole of the passage from the judgment of Buckley LJ in Methuen-Campbell, set out in paragraph 85 above and continued:-

“Buckley L.J. does not refer to Skinner J.'s "single unit," but he does refer to his "integral whole." And he is of course dealing with a house and premises in common ownership.”

The Court of Appeal apparently endorsed the approach taken by Skinner J cited in paragraph 109 above.

112. Stephenson LJ then summarised the rival arguments of the parties on the curtilage issue and said at p. 409:-

“I have found this question difficult to answer, but I have ultimately come to the conclusion, not without doubt, that the terrace has not been taken out of the curtilage by the changes which have taken place, and remains so closely related physically or geographically to the mill as to constitute with it a single unit and to be comprised within its curtilage in the sense that those words are used in this subsection.”

Plainly, the two other members of the court arrived at the same conclusion but also shared the same doubts.

113. There is no disguising the fact that the “single unit” or “integral whole” approach of Skinner J for the purposes of listed building control, apparently endorsed on appeal, is very different from that of Buckley LJ in Methuen-Campbell and of the Court of Appeal in Dyer (notably Nourse LJ) and Barwick. As I have already explained, the “integral whole” referred to by Buckley LJ related to land which was “so intimately associated” with the relevant building as to form “part and parcel of the building”. He did not suggest that the relevant question was that posed by Skinner J, namely whether the land and the building, or in Calderdale the mill and the terrace, together formed part of an integral whole.

114. On analysis, it can be seen that the only authority which might support the overarching principle for which the Defendant and BAL contend is the Calderdale case and not the approach laid down by Buckley LJ in Methuen-Campbell or by the Court of Appeal in Dyer and in Barwick. The latter two authorities clearly decided that where Parliament has chosen to refer to property within “the curtilage of a building”, it is necessary for the decision-maker to consider whether the property in question falls within the curtilage of the relevant building and not whether it falls within the curtilage of all the buildings and land devoted to that institution, function or use. The object of the legislation considered in Dyer and Barwick was to define the scope of local authority housing to which a tenant’s right to buy applied. It was not to do with conveyancing as such. It cannot be said that the “part and parcel of the building” test was a strict conveyancer’s approach. Instead, it represents the correct interpretation of the language used by Parliament in legislation which balances competing property interests, a context which is truly analogous to the non-registration and de-registration provisions of the Commons Act 2006.

Skerritts

115. In Skerritts of Nottingham Limited v Secretary of State for Environment, Transport and the Regions [2001] QB 59 the judge at first instance had held that the Inspector had failed to consider the concept of a curtilage as a small area around a building, when deciding that a stable block fell within the curtilage of a listed building (a hotel converted from a country house). The Court of Appeal reversed the decision of the High Court, holding that there was no requirement for a curtilage to be “small”. Robert Walker LJ stated that in the context of Part I of the Listed Building Act 1990, “the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings”. He noted that “physical layout” is also relevant and added that “the curtilage within which a mansion’s satellite buildings are found is bound to be relatively limited”, although the concept of “smallness” is an unhelpful criterion. I agree with Lieven J that “relative size” remains a relevant consideration ([18(iii)] and [28-30] of Challenge Fencing).
116. There is nothing in the *ratio* of Skerritts which detracts from, or modifies, the other principles laid down in Methuen-Campbell, Dyer and Barwick. True enough, Robert Walker LJ referred at p. 65C to Stephenson LJ’s focus in Calderdale on Buckley LJ’s reference to “integral whole”, without elaborating on the approach actually taken by Skinner J in that case. But he also cited the judgment of Buckley LJ in Methuen-Campbell at [1979] QB 543-4, including the critical “part and parcel of the latter [i.e. the building]” test. The argument in Skerritts did not involve any exploration of the difference between these two tests, it was not a matter for the Court of Appeal to resolve, and they did not address it.

Development control

117. The planning system is based upon the control of “development” as defined in s.55(1) of the Town and Country Planning Act 1990 (“TCPA 1990”). There is excluded from that control “the use of any buildings or other land within the curtilage of a dwellinghouse for any purposes incidental to the enjoyment of the dwellinghouse as such” (s.55(2)(e)). The concept of “the curtilage of a building” is also used in the definitions of various permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) (for example in Parts 1, 3, 4, 6 and 7).
118. A case which is often cited in the context of planning legislation is Sinclair Lockhart’s Trustees v Central Land Board (1950) 1 P & CR 195. It was not concerned with development control but with the approach which should be taken by the Board to determining the amount of the then development charge under the Scottish equivalent of s. 70(2) of the Town and Country Planning Act 1947. That provision referred to the amount by which the “value of land with the benefit of planning permission ... exceeds the value which it would have without the benefit of such permission”. The issue was whether “the land” was confined to the area which would itself be developed under the planning permission or whether it also included other land belonging to the landowner that would benefit from the construction of that development (p. 202).
119. Lord Mackintosh held in the Outer House of the Court of Session that “land” meant such part of the applicant’s land as would benefit in value from the planning permission for the relevant development. He then went on to arrive at the same result by treating “land” as

meaning the land upon which the permitted development would stand and such other land as would in law be regarded as “an integral part” of that building and hence its curtilage (pp. 203-4). He based that principle on the decision of the House of Lords in Caledonian Railway Company v Turcan [1898] AC 256 at 263, 266. The decision does not contain a list of the various factors which might be taken into account in defining a curtilage in a particular case, for example those summarised by Buckley LJ in Methuen-Campbell or by Lieven J in Challenge Fencing. But the key point is that the principle identified by Lord Mackintosh, that the curtilage of a building must form an integral part of that building, is the same as that laid down by Buckley LJ and also by Nourse LJ in Dyer ([1989] QB at p 358D), and not the test given by Skinner J in Calderdale. That principle was approved by the Inner House in Paul v Ayrshire County Council [1964] SLT 207, 209, 212, a case which did relate to development control.

120. The statutory purposes of the Listed Building Act 1990 which justified the broad definition of “curtilage” by Skinner J in Calderdale, do not apply to development control under planning legislation, for example the exemption from development control of the use of the curtilage of a dwelling-house for incidental purposes (s.55(2)(e) of TCPA 1990) or the ambit of permitted development rights. Those provisions do not form a statutory code for the protection of heritage or other assets. Permitted development rights are generally to be interpreted in accordance with the ordinary meaning of the language used (English Clays Lovering Pochin & Co. Ltd v Plymouth Corporation [1973] 1 WLR 1346). There is therefore no justification for importing the definition adopted by Skinner J for listed building control into that exercise. That definition goes substantially beyond the sense in which “curtilage” is generally used.
121. The decision of Lieven J in Challenge Fencing is entirely consistent with this analysis. Although the principles set out in [18] include the three “Stephenson factors” taken from Calderdale at p.407 (see also [11]), the judge did not adopt the broad approach elsewhere stated in Calderdale, for example by Skinner J at first instance and by the Court of Appeal at pp. 405 and 408. She did not adopt the overarching principle for which the Defendant and BAL contend in this case. Instead, at [14] Lieven J referred to the key statement of Nourse LJ in Dyer (at p.358D) that “an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached.” That is the same approach as Buckley LJ laid down in Methuen-Campbell (pp.543-4).
122. Furthermore, in none of the general planning law cases cited did the court rely upon the broad approach to “curtilage” which was adopted in Calderdale for the very specific and different purposes of listed building control. Instead, the court has relied upon the three “Stephenson factors” taken from Calderdale and the same principle stated by Nourse LJ in Dyer [1989] QB at p. 358D (see Supperstone J in Burford v Secretary of State for Communities and Local Government [2017] EWHC 1493 (Admin) [32] and [35] and Sir Richard Tucker in Lowe v First Secretary of State [2003] P & CR 24 [14] and [21]).
123. On the authorities as they stand, the broad approach to “curtilage” identified in Calderdale should only be applied to listed building control, but not development control. In general planning cases, it will be necessary in future for practitioners to read the judgment in Challenge Fencing as a whole, and to have also in mind those other authorities which lay down key principles. The guidance in [18], although very helpful, was plainly sufficient for the purposes of that case, but it did not purport to be exhaustive on the approach to identifying a “curtilage”. For example, it will also be necessary to apply the

fundamental principle stated in [14] of Challenge Fencing, and, as appropriate, to refer to the decisions in, for example, Methuen-Campbell, Dyer, and Barwick.

Conclusions

124. The only support for the overarching principle advanced by the Defendant and by BAL, namely that the land and building should comprise part and parcel of the same entity, or are so inter-related as to constitute a single unit or integral whole, comes from the Calderdale case. That principle does not accord with Methuen-Campbell, Dyer, or Barwick, where, in a statutory context analogous to the present one, the correct question to ask is whether the land in question forms part and parcel of the relevant building. The latter approach reflects the ordinary meaning of “curtilage” and is not driven by any expropriatory considerations. That last point is reinforced by the fact that the key test laid down in those cases has been adopted in authorities dealing with general planning law.
125. The wider approach to curtilage in Calderdale is justified for listed building control, which is concerned to bring within its ambit structures or objects which are closely related to the building which has been listed such that their removal or alteration could adversely affect its interest. Even so, the approach in Calderdale was qualified in Debenhams by the addition of a test which requires those additional structures or objects to be ancillary to the building identified in the statutory list.
126. For the reasons I have already given, I do not consider that the use of “curtilage” in the extended definition of “listed building” is analogous to its use in the de-registration and non-registration provisions in schedule 2 to the 2006 Act. The 2006 Act takes a balanced approach to the protection of, on the one hand, rights of common and public access to commons and town or village greens and, on the other, the interests of the owners of buildings on such land. There is no justification for adopting for the 2006 Act the “broad approach” to defining curtilage which the court expressly employed in Calderdale in order to promote the efficacy of listed building control.
127. For all these reasons, I reject the overarching principle for which the Defendant and BAL contend for interpreting and applying the term “curtilage” in the 2006 Act. In my judgment the phrase “the curtilage of a building” in that legislation requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the *building* and not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose.

HCC’s Grounds of Challenge

Ground 2

128. It is convenient to deal with ground 2 first. This challenges the Inspector’s reasoning in DL 80 to 82 on the subject of ancillarity.
129. HCC raises two points. First, it submits that the Inspector erred in law by holding that the application land is ancillary to the terminal building. The terminal building is ancillary to the application land and not the other way round because the building exists only to serve the activities taking place on the airport land and the requirements which they give rise to. Second, HCC submits that the Inspector erred in holding that at one and the same time the

application land was ancillary to the terminal building and the terminal building was ancillary to the application land. Those findings are inconsistent with the very essence of one thing being ancillary to another.

130. The Defendant responds that it is not a legal requirement that land be ancillary to a building in order to fall within its curtilage. On the first point the Defendant relies upon the fact that the Inspector also made a finding that the application land was ancillary to the terminal building, because the latter acted as “the hub” for the airport, containing the control tower from which all aircraft movements were controlled and the administration and support facilities (DL 68, 77 and 81). On the second point, the Defendant submits that the word “ancillary” is not a term of art. It simply means subservient or subordinate. Property A may be subservient to property B in some respects and property B may be subservient to property A in others. That is effectively how the Inspector treated the application land and the terminal building. He regarded the two as being mutually supportive. This is what HCC had described as “functional equivalence” in order to support their case that the application land could not be within the curtilage of the terminal building. But the Inspector adopted the response advanced by BAL, namely that the functional equivalence demonstrated that the land *and* the building formed an integral part of the same unit (DL 80-82). That is a reference to the overarching principle for defining a curtilage for which both the Defendant and BAL have contended in this court. The Defendant submitted in writing that if nonetheless the Inspector’s reasoning on the “ancillary” issue involved an error of law, the court should refuse relief on the basis that it is highly likely that the outcome for HCC would not have been substantially different if the conduct complained of, that is the reasoning in the decision letter, had not occurred (s.31(2A) of the Senior Courts Act 1981). That contention was not pursued at the hearing. Instead, Mr. Westaway submitted that the reasoning criticised by HCC was not material to the Inspector’s conclusion.

131. BAL made submissions similar to those of the Defendant.

Discussion of ground 2

132. It is well established that there is no legal requirement for land to be ancillary to a building in order to fall within the curtilage of that building. But whether the land in question is ancillary to the relevant building is a material consideration which the decision-maker may take into account. If that factor is taken into account, then the decision-maker must understand the concept correctly.

133. In this case, the terms “primary” and “ancillary” were applied to the function or use of different areas of land. In relation to the *same* function or use carried out on two areas of land, I do not see how, as a matter of ordinary English, each area of land can be said to be ancillary to the other. That formulation does not allow any room for one of the two areas of land to have “primary” status. The notion of something being “ancillary” is meaningless unless that can be related to something else with a primary role.

134. Furthermore, in this case the “ancillary” factor should have been applied in order to help decide whether the operational land was within the curtilage of the terminal building, not whether the terminal building was within the curtilage of the operational land. So, the only question on “ancillariness” which could support the proposition that the operational land was within that curtilage was whether the operational land was ancillary to the terminal building, and not the other way round. If the answer to that particular question was “yes”, then that would lend support to that proposition, albeit that would not be conclusive. But if

the answer was “no”, then that would be a pointer against the operational land being within the curtilage of the terminal building. Not surprisingly, neither the Defendant nor BAL referred to any authority in which a finding that the use of a building was ancillary to the use of other land was relied upon to support a conclusion that the land lay within the curtilage of the building.

135. I acknowledge that the correct “ancillary” question cannot be divorced from the way in which a use or function is described, or the level of abstraction involved. In a typical case there is no difficulty in describing, for example, the use of a dwelling-house as residential and then going on to consider whether the use of an area of land is ancillary to that purpose. The primary purpose is carried on in the building for which the curtilage is being identified.
136. In the present case, the function of the relevant building was to co-ordinate the safe arrival and departure of aircraft at the airport and to provide “administrative and technical support” for the activities at the airport (emphasis added) (DL 81 quoted at paragraph 67 above). No doubt most of that function could be described as important or even essential to the running of the airport. Without that control and support it is doubtful whether the airport could be operated, at least in its current format. But I do not see how rationally it could be said that the use of the operational land for aircraft movements, storage and maintenance could be said to be ancillary to the function of the terminal building. Aircraft movements are the *raison-d’être* of the airport. Without them the terminal building would be pointless. It is illogical to suggest that the use of the operational land is ancillary to the building the purpose of which is to facilitate and support, even control, those movements. For these reasons I conclude that the Inspector, having decided to take the “ancillarity” criterion into account as a relevant factor, misunderstood what is meant by “ancillary” when he came to apply it.
137. Thus far, I accept both criticisms made by HCC. But the submission of the Defendant and BAL is that they do not matter, because (i) the answer to the ancillary question cannot be conclusive and (ii) the Inspector used his findings to answer an additional question which represents the correct test for identifying curtilage land, at least in a case such as the present one. He agreed with BAL that functional equivalence between the operational land and the terminal building demonstrated that both the land and the building formed an integral part of the same unit.
138. According to my analysis of the case law on curtilage, that line of reasoning involves a fundamental error of law. The correct principle is that for property to qualify as falling within the curtilage of a building, it must form part and parcel of that building. The question is not whether the building forms part and parcel of some unit which includes that land, or whether those two items taken together form part and parcel of an entity or an integral unit. The fact that in DL 54 the Inspector did summarise case law setting out the correct principle (see paragraph 16 above) is nothing to the point. The simple fact is that by the time he came to express his conclusions in DL 80-82 he adopted the fundamentally different and incorrect test which had been advanced by BAL.
139. That incorrect test is little different in effect from the approach used in development control to identify, not a “curtilage” but a completely different concept, a “planning unit”, and to test whether a material change of use has occurred within that unit (Burdle v Secretary of State for Environment [1972] 1 WLR 1207, 1212). Here the planning unit would comprise the operational land and the building within which, either there is a single main purpose, namely that of an airport, to which the various activities are incidental, or

else it is not possible to say that one activity is incidental to another. The flaw in BAL's approach is that it asks whether the building in question forms part of some larger unit. That is impermissible when the question posed by the statute is whether land forms part of the relevant building, and thus falls within its curtilage. The "curtilage" question is not correctly addressed by asking what is the curtilage of an institution or use which occupies some larger area than the building itself (Dyer and Barwick).

140. The legal errors I have identified cannot be described as non-material to the Inspector's reasoning. Plainly they were fundamental. Furthermore, it would be impossible for the court to say that if these errors had not been committed then it is highly likely that the outcome would have been the same, that is that the application for de-registration of the land outside the terminal building would still have been granted. Indeed, if the law had been correctly applied, it seems to me that, on the material before the court, there is at least a real likelihood that the application to de-register anything other than the terminal building and the Bushe Café would have been rejected.

141. For these reasons I uphold ground 2, which is sufficient in itself to require the decision to be quashed.

Ground 1

142. In ground 1 HCC criticised the manner in which the Inspector applied the "relative size" criterion in DL 75 and 76. He said that although the claimed curtilage land might appear "excessive" compared to the relatively small size of the terminal building, in the context of the purposes to which the *building and land* are put that was not the case (DL 75). According to the Inspector the context was that the operational land and the terminal building formed part of a general aviation airport. Likewise, in DL 76 he concluded that "the relative size of the application land to the terminal building is proportionate to the function and purpose to which *the building and land* are put" (emphasis added).

143. Mr. Laurence QC submitted that in Skerritts the Court of Appeal not only rejected a "smallness" criterion but, in endorsing part of the judgment of Nourse LJ in Dyer, by implication required a "largeness" test to be applied, or at least considered. In other words, the Inspector ought to have asked himself the question whether the 115 acres of operational land was "altogether in excess of anything that could be described as curtilage".

Discussion of ground 1

144. I do not accept that the Court of Appeal in Skerritts was purporting to lay down a new criterion of "largeness" which falls to be applied in any case where a decision-maker has to consider whether land falls within the curtilage of a building. Instead, the passage upon which Mr. Laurence QC relies was simply expressing its agreement with the conclusion in Dyer that it would be irrational or perverse to treat the 100 acre park as forming the curtilage of the former mansion house or any of the college buildings.

145. However, DL 75 and 76 are flawed for the same reasons as those already identified under ground 2. The Inspector applied the "relative size" criterion by considering the purpose to which the land *and* the building were both put. The true question is whether the land qualified as the "curtilage of the building" and thus the focus should have been on the size of the land relative to that of the building. On the Inspector's approach the whole of a golf course could be said to fall within the curtilage of the clubhouse because the relative size

of the open land used for the course and its setting is proportionate to the functions and purpose for which both the land and the building are used. This approach would not accord with the law laid down in authorities such as Dyer and Barwick.

146. The facts of this case illustrate why the overarching principle put forward by the Defendant and BAL cannot be correct. Where land does truly form part and parcel of a building, it makes sense and it is appropriate to speak of the combination of that building and its curtilage as a message, or an integral whole, or a unit and, of course, a conveyance or transfer need only refer to the building in order to transfer that whole entity. But those phrases merely describe the consequence of having applied the correct legal approach for identifying the curtilage of the building. They do not supply a test for identifying a curtilage.
147. If on the other hand it were to be permissible to identify a curtilage by asking whether the building and claimed curtilage land formed a single unit with “functional equivalence”, or in effect were used for the same overall purpose, other factors which have until now been treated as relevant considerations would have a much reduced, or even possibly no, significance. It would not matter whether the land serves any ancillary function. Equivalence of function, or being “mutually supportive”, would suffice. As this case amply demonstrates, “relative size” would have much less or possibly no significant effect in restraining the extent of a curtilage. Even if the size of the alleged curtilage land would appear to be “grossly disproportionate” to the size of the relevant building (or buildings), that could be overcome merely by the fact that that size is proportionate to the purposes by which the building *and land* are put. It would also make it difficult to say, as in Dyer and Skerritts, that the area of land was altogether in excess of anything that could be described as the curtilage of the building. The same reasoning as the Inspector adopted in the present case could be replicated for an even larger airfield with a single building, or for a golf course or other open air recreational facility occupied with a club house. This approach goes way beyond any reasonable meaning that could be given to the phrase “the curtilage of a building”.
148. To summarise, DL 75 and 76 are legally flawed for the reasons I have given, but not for the reasons currently pleaded under ground 1. However, because these reasons were argued under ground 2, there is no prejudice to the Defendant or BAL in the court recognising that they obviously apply also to DL 75 and 76. The error in those paragraphs clearly tainted the overall conclusions in DL 82 and 87. It is not possible for the court to uphold the decision letter on the ground that this error is non-material or by the application of s.31(2A). The decision ought to be quashed on this freestanding ground as well as ground 2. It is appropriate that the Statement of Facts and Grounds be amended to include this basis of challenge.

Conclusion

149. For the reasons set out above the decision dated 12 June 2019 on the application for de-registration of part of Yateley Common must be quashed.

Appendix 3

R (Egerton) v Taunton Deane Borough Council, 2008 - EWHC 2752 (Admin)

 R (on the application of Egerton) v Taunton Deane Borough Council

Overview | **[2008] EWHC 2752 (Admin)** | [2008] All ER (D) 231 (Oct)

R (on the application of Egerton) v Taunton Deane Borough Council [2008] EWHC 2752 (Admin)

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

SULLIVAN J

23 OCTOBER 2008

23 OCTOBER 2008

Town and country planning — Development — Building — Interested parties being granted planning permission for extension of farm building — Claimant challenging grant of permission on basis farm building within curtilage of different building with listed building consent — Local planning authority rejecting challenge — Whether authority erring — Planning (Listed Buildings and Conservation Areas) Act 1990, s 1

P Wadsley for the Claimant

P Cairnes for the Defendant

The Interested Parties did not appear and were not represented

Ashfords; Taunton Deane Borough Council

SULLIVAN J:

[1] In this application for judicial review the Claimant seeks a quashing order in respect of the Defendant's decision on 1 February 2007 to grant planning permission to the interested parties for an extension to Mill Barn, Jews Farm, Wiveliscombe without requiring the interested parties to apply for listed building consent.

[2] The Claimant lives at the Old Granary at Jews Farm. He objected to the interested parties' application for planning permission on the basis that Mill Barn was a listed building because it was within the curtilage of Jews Farmhouse which was listed on 26 March 1984. The Defendant rejected that contention and decided that Mill Barn was not listed, because it was not within the curtilage of the listed farmhouse.

[3] The listing on 26 March 1984 describes the farmhouse, 18th century, incorporating earlier work, with 19th century alterations, but does not describe or define its curtilage.

[4] It is common ground that if Mill Barn was within the curtilage of the farmhouse on 26 March 1984, it is to be treated as part of the listed building by virtue of s 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

[5] It is also common ground that whether Mill Barn was within the curtilage of the farmhouse on 26 March 1984 is a question of fact, and that in deciding that question of fact, three factors are of particular relevance "They are (1) the physical 'layout' of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present." (See per Stephenson LJ at p 407 of *Attorney General ex rel Sutcliffe v Calderdale Borough Council* (1982) 46 P & CR 399, [1983] JPL 310). Stephenson LJ continued:

"Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage. So when the terrace was built, and the mill was worked by those who occupied the cottages, and the mill owner owned the cottages, it would have been hard, if not impossible, to decide that the cottages were outside the curtilage of the mill."

In that case the cottages were physically linked to the mill.

[6] On behalf of the Claimant, Mr Wadsley submitted that the Defendant had considered only the second factor, ownership, and had wrongly concluded that the farmhouse and Mill Barn were not in common ownership in 1984, and had failed to address the first and the third factors mentioned in *Calderdale*.

[7] The Defendant accepts that the evidence now available establishes, on the balance of probability, that the two properties were in the same ownership in 1984, and further accepts that when the dispute first arose in 2005, its conservation officer had focused on the question of common ownership. However, the Claimant was not satisfied with the Defendant's response to his queries in 2005 and referred the matter to the Local Government Ombudsman. In its response to the Ombudsman, the Defendant listed correspondence in which the Defendant's officers had referred, inter alia, to the *Calderdale* case and to relevant guidance to similar effect in paras 3.34 and 3.35 of Planning Policy Guidance 15: Planning and the Historic Environment. Further, the Defendant had stated that it was not persuaded "on the range of material criteria" that Mill Barn was included in the listing in 1984 and had referred to ownership as "one of the factors" that would have to be considered in any review.

[8] When the correspondence is read as a whole, I do not accept Mr Wadsley's submission that in determining the planning application some time later, in February 2007, the Defendant simply had regard to the question of ownership to the exclusion of the two other factors that are referred to in the *Calderdale* decision to which the Defendant had itself referred. Provided the Defendant correctly directed itself and had regard to the relevant factors, the question for this court is whether the Defendant could reasonably have come to the conclusion that Mill Barn was not within the curtilage of the farmhouse in 1984. It is not for this court to substitute its own view of the matter.

[9] However, in the present case that distinction between the court's own view and the range of views reasonably open to the Defendant local planning authority is of no consequence because, for the reasons set out below, I am satisfied that not merely was the Defendant entitled to come to the conclusion that Mill Barn was not within the curtilage of Jews Farmhouse, it was plainly the correct conclusion to come to on the basis of the admittedly limited evidence as to the circumstances as they existed on the ground in March 1984.

[10] Looking firstly at the physical layout of the farmhouse and Mill Barn, a 1965 aerial photograph shows the farmhouse enclosed on its western and southern sides by a wall. In his witness statement the Claimant says that this wall, which was replaced after 1984 by a higher wall, was approximately two foot nine inches to three foot tall. Mill Barn and the Old Granary are located to the south west of the farmhouse, on the other side of the wall.

[11] At its nearest point, Mill Barn is some 34 metres from the farmhouse. Between Mill Barn and the farmhouse is an outbuilding, which was in existence in 1984 and now belongs to Mill Barn. The outbuilding is some 13.5 metres from the farmhouse. The outbuilding is, and was in 1984 (see the Ordnance Survey annexed to a conveyance dated 13 April 1988), L-shaped. The Old Granary, which was also in existence in 1984, lies immediately to the north

of Mill Barn. To the north east of the Old Granary, and directly to the west of the farmhouse, there is, and was in 1984, another building which now belongs to the Old Granary.

[12] I accept that it must be very much a matter of impression, but looking at the 1965 aerial photograph and the Ordnance Survey annexed to the 1988 conveyance, this group of four buildings, the Old Granary, Mill Barn, the L-shaped building and the building on their northern side, now owned by the Old Granary, together form a grouping of buildings which “turns its back” on the farmhouse on the other side of the wall.

[13] Although the Claimant contends in his witness statement that there was a five-barred gate which allowed vehicular access through the wall, which is hidden by trees in the 1965 aerial photograph, it would appear from examination of the Ordnance Survey annexed to the 1988 conveyance that this gate, which is just to the north of the L-shaped building, in fact gave access in 1984, not into the area enclosed by the wall, but into the field to the south of the wall.

[14] The Claimant, in his witness statement, refers to the position of this gate being evident on an extract from the 1904 Ordnance Survey. That is indeed the case. The 1904 Ordnance Survey perhaps illustrates why the group of four buildings, including Mill Barn, can be said to “turn their back” on the farmhouse and its curtilage behind the wall, or perhaps, to put the matter more accurately, why the farmhouse turns its back on them.

[15] In 1904, it would appear from the Ordnance Survey that the principal access to the farmhouse was from the south, with a drive that ended in a formal turning circle to the south of the house, which was framed by ornamental planting on either side. A gate, in the position referred to by the Claimant, probably led through into the farmyard buildings beyond to the west. At that time the main access to the farmyard to the west of the farmhouse was via the north side of the house. The access road then curved south, alongside the curved wall, to the west of the farmhouse.

[16] That curved wall still existed in 1984, but as the 1965 aerial photograph shows, the formal drive and planting to the south of the farmhouse had been cut through by a wall with two straight sections in a dog leg, which separated the farmhouse from what had, by 1965, become a field to the south of the wall.

[17] The Claimant contends that there was another pedestrian gate in the wall. The 1965 photograph clearly shows the line of a path running a little distance to the north of the northern building in the group of four buildings, to which I referred earlier, and there may well have been a gap or gate in the circular section of the wall at that point, hidden amongst the trees.

[18] On the assumption that there was such a gate (there is no contemporaneous evidence to that effect beyond that which may be inferred from the aerial photograph), the farmhouse and its curtilage behind the wall is still very obviously separate from the farm buildings beyond the wall.

[19] Beyond the four buildings to which I have referred, there were a number of larger agricultural buildings which stretched away further to the west. If Mr Wadsley is correct and the curtilage of the farmhouse was not defined by the wall on its western and southern sides, and extended so as to incorporate Mill Barn and the Old Granary, there is no readily discernible feature which might serve to define the curtilage to either the west or the south of the farmhouse. Mr Wadsley very properly accepted that the curtilage could not extend so as to include the whole of the farm, but one has to ask: if the curtilage of the farmhouse was not defined to the south by the wall, then where did it end? Beyond the wall there are simply fields. If the curtilage is not defined to the west of the farmhouse by the wall, where does it end? Mr Wadsley submitted that the curtilage would include, consistently with his submissions, the large agricultural buildings further to the west of the four buildings.

[20] I do not accept the submission that either those buildings, or the group of four buildings, including Mill Barn, were within the curtilage of the farmhouse. In 1984 there was a clear distinction between the farmhouse and its curtilage and the farmyard with its buildings, which included Mill Barn. I accept that there will not necessarily be

such a physical distinction in each and every case, but on the evidence of the aerial photograph and the Ordnance Survey, there was such a distinction in the present case.

[21] This view is reinforced by the only evidence as to the use and function of the Old Granary and Mill Barn in 1984, the third factor which *Calderdale* tells us must be taken into account. The names of the two converted barns, the Old Granary and Mill Barn, are not mere whimsy in the present case. It would seem that they reflect the former agricultural uses of those buildings.

[22] A letter from a Mr Buckingham, dated 13 April 2007, is the only evidence as to the use of the buildings in 1984. Mr Buckingham reared pheasants for many years towards the western end of Jews Farm with the permission of Richard Coate, who lived at Jews Farmhouse between 1978 and 1984, and then at a cottage known as Candletrees to the west of Jews Farmhouse between 1984 and 1991.

[23] Mr Buckingham says in his letter that Mr Coate was a farmer who traded in sheep and cattle throughout his time at Jews Farm on around 100 acres of farmland. Mr Buckingham says this about the use of the buildings:
“Prior to Mr Coate disposing of the two stone barns nearest to Jews Farmhouse and to the west of his home in 1998, I agreed to clear the barns which had been used as storage by him since they were reasonably weatherproof. The two barns had earlier been used for drying grain and milling operations.”

[24] Mr Buckingham says that he has lived in Wiveliscombe all his life and, as far as he is aware, “[the] two barns were always used in conjunction with the farming activities carried on at Jews Farmhouse”. Thus, it can be seen that in 1984 Mill Barn and the Old Granary were not being used for purposes that were ancillary to the use of the farmhouse as a dwelling house; they were being used for the purposes of the general farming enterprise which was being carried on at Jews Farm. They, and the agricultural buildings to the west, were being used for agricultural purposes. They were not being used, for example, to garage the farmer's car, to store his domestic items, as a children's playroom, staff quarters et cetera.

[25] Mr Wadsley accepted that on the evidence, limited though it was, Mill Barn was being used for agricultural purposes in 1984, but his principal submission was that this was of no consequence, because the farmhouse was not simply a dwelling house, it was the hub from which the agricultural business at Jews Farm was being conducted. I readily accept that the farm was being run from the farmhouse in 1984, but the whole of the farm, and all the agricultural buildings upon it, cannot sensibly be regarded as being within the curtilage of the farmhouse on that account.

[26] The primary use of the farmhouse was as a house. The farm, as a whole, was not listed, the farmhouse was listed, and its curtilage, as a house, was clearly defined by the wall which separated the residential use within the wall from the agricultural use that was being carried on in the agricultural buildings, including Mill Barn, and on the fields beyond.

[27] As Mr Cairnes pointed out on behalf of the Defendant, the separate and distinct residential function of the farmhouse was reinforced by the fact that after the farmhouse was sold by the Coate family in July 1984, very shortly after it was listed, Richard Coate continued to farm Jews Farm from another dwelling, Candletrees (see Mr Buckingham's letter). He did so using Mill Barn and the Old Granary and the other buildings just as they had been used before the sale of the farmhouse, namely as agricultural buildings, until he obtained planning permission in 1987 to convert the Old Granary and Mill Barn to dwellings, following which they were sold for that purpose.

[28] For these reasons, although the whole of Jews Farm, including the farmhouse and all the agricultural buildings, including Mill Barn, was in common ownership when the farmhouse was listed in 1984, the listed farmhouse and its residential curtilage was both physically separated from, and functionally distinct from, the agricultural land and buildings on the other side of the wall. The fact that they were all constituent parts of the same farming enterprise at Jews Farm does not mean that Mill Barn, or any of the other agricultural buildings beyond the wall, were within the curtilage of the farmhouse. The Defendant's decision was, in my judgment, entirely correct, and there is therefore no basis upon which the planning permission should be quashed.

Application dismissed.

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Appendix 4

Institute of Historic Building Conservation's 'Advice Note on the Curtilage Rule – An interpretation of the Taunton Deane judgment' (March 2019)



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IHBC GUIDANCE NOTES

Advice Note on the Curtilage Rule – An interpretation of the Taunton Deane judgment

GN2019/2
v.March2019

This is one of a series of occasional Advice Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Advice Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

This note sets out the IHBC's advice on the interpretation of the High Court judgment in the Egerton v Taunton Deane case (also known as Jews Farm)¹, relating to the identification of freestanding objects and structures that constitute part of a listed building under the so-called 'curtilage rule'. The advice has particular relevance to listed farmhouses and associated farm buildings but has implications for other types of listed building. The advice note has been prepared by the IHBC Legal Panel, with advice from respected specialist lawyers, and has been adopted as the official advice of the Institute by the IHBC's Trustees.

Section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that:

"any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948...shall... be treated as part of the building."

"Curtilage" is not defined in the 1990 Act. As a result, the Courts have been called on a number of times to interpret whether a particular structure is in the curtilage of a building in the list ("the principal building") and so benefits from protection. What has emerged is a test based on three

criteria, formulated by the Court of Appeal in the Calderdale case as follows:

- 1) The physical layout of the principal building and the structure;
- 2) Their ownership, past and present; and
- 3) Their use or function, past and present.²

These criteria should be applied to the facts as they were at the date of listing.

As to the first, how closely related physically and geographically are the supposed curtilage structure and the principal building – the building in the list – bearing in mind that the curtilage can in some circumstances extend to buildings or structures that are some distance from the principal building?

As to the second, was the structure in the same (or linked) ownership as the principal listed building?

In relation to the third criterion, was the use of the structure related in some way to the use of the principal listed building? The House of Lords, in the *Debenhams* case³, subsequently emphasised that the use of the structure must be “ancillary” to the use of the principal building. And it gave the example of a stables of a mansion house, or the steading of a farmhouse.⁴

The uncertainty following from the *Jews Farm* case arose from the judge’s finding that the barn and the granary had always been used in conjunction with the farming activities carried on at the farm, and not for purposes that were ancillary to the use of a listed farmhouse as a dwellinghouse (for example, to garage the farmer’s car or to store his domestic items). In effect the court ruled that the third criterion (ancillary use) was not satisfied. The farmhouse was just that: a house. The other buildings were not ancillary to it. Therefore, they were not within the curtilage of the listed building.

However, the *Jews Farm* case is not determinative in all farm cases. In large part, the decision turned on its particular facts – notably that there was a substantial wall between the farmhouse and the two farm buildings. Other cases may well be decided differently. The nature of farmhouses can be different from regular houses and it will often be the case that individual circumstances cannot be easily categorised in a black and white way and will more likely be seen as shades of grey.

Historically, farmhouses were generally not only the residence of the farmer and his family, they commonly also functioned as the administrative unit of the agricultural enterprise concerned with the production of food from the

surrounding farmland. Traditional farmsteads mainly comprised the farmhouse and some or all of the working farm buildings and spaces often closely dependent on each other.⁵ Buildings would have accommodated several processes, activities or functions, such as storage and processing of crops and sheltering and management of farm animals, all relating to each other. Sometimes each function justified a separate building, sometimes several functions were accommodated under one roof; some farms also had isolated field barns or outfarms. Gardens usually developed as private areas with a distinct and separate character, screened from the working areas of the farm by hedges or walls.⁶ In particular, in freestanding farm groups located in the countryside, farmhouses provided 'round the clock' security and convenience, especially in relation to the management of livestock.

The distinction between domestic and non-domestic farm buildings is, therefore, not always cut and dried, particularly where the farmhouse and working buildings are attached or intimately related; in the Jews Farm case, the geographical relationship of the barn and the granary to the farm house (the first test) was also considered significant, particularly the existence of the wall separating them. As the judge put it, the farm house turned its back on the barn and the granary. If all three buildings had fronted onto a single courtyard, for example, the result might have been different. There will therefore often be cases where barns and other working buildings of a farmstead are geographically related to a farm house, and their use ancillary to its use, such that they will be found to be within its curtilage.

It should be noted that the decision in the Jews Farm case has not been reviewed by any higher courts to date.

Where it seems that a structure does not, or may not, enjoy protection by being within the curtilage of a listed building, consideration should be given to inviting Historic England, Cadw, Historic Environment Scotland or the Historic Environment Division, Northern Ireland to revise the list to include the structure in its own right or to show it within a demarcated curtilage.

Further Reading:

- a) Listed Buildings and Other Heritage Assets (5th edition): Mynors and Hewitson (which contains diagrams showing the facts in each of the cases mentioned)
- b) Historic England Advice Note 10: Listed Buildings and Curtilage
- c) Historic England: Agricultural Buildings – Selection Guide
- d) English Heritage and Countryside Agency: Historic Farm Buildings:

Constructing the Evidence Base

- e) Historic England: Farm Buildings and Traditional Farmsteads
- f) Historic England: Farmstead Assessment Framework

Endnotes

1. Subject to S.1 (5A) which provides for new list descriptions to identify objects or structures that are not to be treated as part of the listed building and to identify any part or feature of the building that is not of special architectural or historic interest.
2. Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC [1983] JPL 310.
3. House of Lords, Debenhams PLC v Westminster CC (1986)
4. The definition of a “steading” is “the outbuildings in contrast to the farmhouse”.
5. Historic Farm Buildings: Constructing the Evidence Base
6. Historic England: Farmstead Assessment Framework

February 2019